United States Court of Appeals
for the Second Circuit

APPENDIX

ORIGINAL

77-6119

United States Court of Appeals

For the Second Circuit

Docket No. 77-6119

BERALDINE L. ACHA and ARLENE M. EGAN, each individually and on behalf of all others similarly situated,

Plaintiffs-Appellants,

against

ABRAHAM D. BEAME, individually and in his capacity as Mayor of the City of New York, MICHAEL J. CODD, individually and in his capacity as Police Commissioner of the New York City Police Department, and THE CITY OF NEW YORK, as a public employer,

Defendants-Appellees.

UNITED

SEP 14 1977

ON APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE SOUTHERN DISTRICT OF NEW YORK

JOINT APPENDIX

Volume I—Pages 1A to 303A

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Docket Entries

A 1

.75 CIV 3128 ACHA, BERALDINE L. ETAL VS BEAME, ABRAHAM D. etc.ETAL

DATE	NR.	PROCEEDINGS DUFFY, PG.2
06/26/75	1	Filed Complaint. Issued Summons.
06-30-75	2	Filed defts' affidavit of Cornelius J. Behan in opposition to plaintiffs' motion for a preliminary injunction restraining defts'.
06-30-75	3	Filed defts' Memorandum of Law.
07-02-75	4	Filed Opinion # 42709 and Order-- for the reasons stated, the injunctive applications of the pltffs. will be denied and the cause will be dismissed. So ordered- DUFFY, J. (m/n)
07-01-75	5	Filed summons and return-served the folowing: Michael J. Codd by Lt. Brennen on 06-26-75. New York City c/o Corporation Counsel by Anna Schonbuch on 06-26-75. Abrhham D. Beame by Lau. Gersen on 06-26-75.
07-03-75	6	Filed pltffs' notice of appeal from the order denying pltffs' motion for a preliminary injunction, etc. and from the final judgment entered on 07-01-75. Copy to: Corporation Counsel, of the City of N.Y. Ent. 7-7-75.
07-09-75	7	Filed pltffs' affdvts and Order to Show Cause for preliminary injunction and temporary restraining order.-- that no bond or surety be posted by pltffs. Ret. 6-30-75. DUFFY, J.
07-09-75	8	Filed pltffs' affdvt. of Ronald H. Schectman in support of application for a temporary restraining order and preliminary injunction.
07-09-75	9	Filed pltffs' memorandum of law.
07-09-75	10	Filed deft. N.Y.City Police Dept. affdvt. of Cornelius J. Behan in opposition to pltffs' motion for a preliminary injunction.
8-6-75	11	Filed transcript of record of proceedings dated 6-30-75
08-08-75	12	Filed Notice that record has been Certified and transmitted to the USCA this day.
08-26-75	13	Filed Proposed Judgment--ordered that pltffs' application for a preliminary injunction be denied and that the complaint be dismissed with leave granted to file and serve an amended complaint within 15 days of the entry of this judgment and service of notice. Clerk (m/n)
08-29-75	14	Filed Proposed Counter Judgment- ordered that pltffs' application for a preliminary injunction be denied and that the action be dismissed. DUFFY, J. Judgment entered-9-2-75. Clerk (m/n)
9-3-75	15	Filed plaintiffs' Amended Notice of Appeal from the order and judgment made by Judge Duffy dated August 28-75 and entered on Sept. 2-75, denying the application of plaintiffs for a preliminary injunction and dismissing the action without leave to amend the complaint. Mailed notice to W. Bernard Richland, Esq, Corp. Counsel of N.Y.
9-3-75	16	Filed letter dated July 30-75, from Murray A. Gordon, P.C. to Judge Duffy.
9-3-75	17	Filed letter dated August 7-75, from Nancy E. Siegel to Judge Duffy.
9-3-75	18	Filed letter dated August 15-75, from Murray A. Gordon, P.C. to Judge Duffy.
09-3-75	19	Filed notice that the supplemental record on appeal has been certified and transmitted to the USCA on 09-03-75.
3/2/76		Pre trial before Pollack, J.
03-22-76		Filed notice of motion of the Equal Employment Opportunity Commission to participate as Amicus Curiae and statement in support thereof.

(CONT'D—PG #3)

75 Civ 7388

.75 CIV 3128 ACHA, BERALDINE L. ETAL VS BEAME, ABRAHAM D. etc.ETAL A 2

DATE	NR.	PROCEEDINGS DUFFY, PG. 2
06/26/75	1	Filed Complaint. Issued Summons.
06-30-75	2	Filed defts' affidavit of Cornelius J. Behan in opposition to plaintiffs' motion for a preliminary injunction restraining defts'.
06-30-75	3	Filed defts' Memorandum of Law.
07-02-75	4	Filed Opinion # 42709 and Order-- for the reasons stated, the injunctive applications of the pltffs. will be denied and the cause will be dismissed. So ordered- DUFFY, J. (m/n)
07-01-75	5	Filed summons and return-served the folowing: Michael J. Codd by Lt. Brennen on 06-26-75. New York City c/o Corporation Counsel by Anna Schonbuch on 06-26-75. Abrhham D. Beame by Lau. Gersen on 06-26-75.
07-03-75	6	Filed pltffs' notice of appeal from the order denying pltffs' motion for a preliminary injunction, etc. and from the final judgment entered on 07-01-75. Copy to: Corporation Counsel, of the City of N.Y. Ent. 7-7-75.
07-09-75	7	Filed pltffs' affdvts and Order to Show Cause for preliminary injunction and temporary restraining order.-- that no bond or surety be posted by pltffs. Ret. 6-30-75. DUFFY, J.
07-09-75	8	Filed pltffs' affdvt. of Ronald H. Schectman in support of application for a temporary restraining order and preliminary injunction.
07-09-75	9	Filed pltffs' memorandum of law.
07-09-75	10	Filed deft. N.Y.City Police Dept. affdvt. of Cornelius J. Behan in opposition to pltffs' motion for a preliminary injunction.
8-6-75	11	Filed transcript of record of proceedings dated 6-30-75
08-08-75	12	Filed Notice that record has been Certified and transmitted to the USCA this day.
08-26-75	13	Filed/Proposed Judgment--ordered that pltffs' application for a preliminary injunction be denied and that the complaint be dismissed with leave granted to file and serve an amended complaint within 15 days of the entry of this judgment and service of notice. Clerk (m/n)
08-29-75	14	Filed Proposed Counter Judgment- ordered that pltffs' application for a preliminary injunction be denied and that the action be dismissed. DUFFY, J. / Judgment entered-9-2-75. Clerk (m/n)
9-3-75	15	Filed plaintiffs' Amended Notice of Appeal from the order and judgment made by Judge Duffy dated August 28-75 and entered on Sept. 2-75, denying the application of plaintiffs for a preliminary injunction and dismissing the action without leave to amend the complaint. Mailed notice to W. Bernard Richland, Esq, Corp. Counsel of N.Y.
9-3-75	16	Filed letter dated July 30-75, from Murray A. Gordon, P.C. to Judge Duffy.
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9-3-75	18	Filed letter dated August 15-75, from Murray A. Gordon, P.C. to Judge Duffy.
09-3-75	19	Filed notice that the supplemental record on appeal has been certified and transmitted to the USCA on 09-03-75.
3/2/76		Pre trial before Pollack, J.
03-22-76		Filed notice of motion of the Equal Employment Opportunity Commission to participate as Amicus Curiae and statement in support thereof.

(CONT'D—PG. #3)

75 Civ 7388

75 CIV. 3128-- ACHA, GERALDINE, L., et al-- vs- BEAME, ABRAHAM D., etc., et al

D. C. 110 Rev. Civil Docket Continuation (PAGE # 3) (DUFFY, J.)

DATE	PROCEEDINGS	Date Order or Judgment Noted
04-26-76	Filed true copy of USCA order with opinion reversing order and judgment of District Court and remanding the action to District Court for a further proceedings with costs to be taxed in favor of the appellants in the sum of $485.27 and docketed as Judgment # 76,368 on 4-26-76 (m/n)	To. E.A
05-10-76	Filed Amended Complaint.	
05-10-76	Filed unsigned Order to Show cause why an order should not be made consolidating the Guardians Association of the N.Y.City Police Dept., et al v. Civil Service Commission of the City of N.Y., et al, with 76 Civ.1982 (RLC) with the instant action.	
05-10-76	Filed memo endorsed on unsigned OTC filed 5-10-76. The within order is not signed but is to be filed in the records of the court. So ordered- DUFFY,J. (m/n)	
05-10-76	Filed Order-- that the Judgment of this Court entered on 9-2-75 is revered, vacated and set aside that the cause be restored to the docket for further proceedings in accordance with such mandate. DUFFY, J. (m/n)	
05-11-76	Filed defts. affdvt. and notice of motion for an order consolidating The Guardians Association, et al v. Civil Service Commission, et al, 76 Civ. 1982 (RLC), with the within action. Ret. 5-18-76	
05-11-76	Filed memorandum of law in support of defts' motion to consolidate.	
05-27-76	Filed pltffs' affdvts. and notice of motion for an order for class certification, summary judgment, preliminary injunction and counsel fees. Ret. 06-17-76	
05-27-76	Filed pltffs' memorandum of law.	
	Filed Memo Endorsed on Motion filed 5-11-76.......Motion denied. So Ordered. DUFFY,J m-n.	
3-22-76	Filed Equal Employment Opportunity Commission's Notice of Motion for an order to participate.	
5-27-76	Filed Memo Endorsed on Motion filed 3-22-76.......The motion is granted. So Ordered. DUFFY,J m-n	
06-29-76	Filed defts' affdvt. of Michael S. Cecere dated 6-24-76	
07-07-76	Filed pltffs' affdvt. of Ronald H. Schectman re: requesting that the consideration of the pending motions for summary judgment be expeditiously treated and decided so as to enable those members of the class an opportunity for a prompt and timely re-appointment	
07-12-76	Filed defts' affdvts. and notice of cross motion for an order pursuant to Rule 56 FRCP granting defts. summary judgment.... Ret. 7-16-76.	
07-12-76	Filed defts' memorandum of law in support of cross-motion for summary judgment and in opposition to pltffs. motions.	
07-12-76	Filed defts' Rule 9 (g) Statement.	
07-14-76	Filed Pltffs Reply Affidavit in opposition to the cross motion of the defts for summary judgment and in reply to the opposing affidavits submitted by the defts re:instant motions. by Murray A.Gordon.	
07-14-76	Filed Pltffs' Memorandum of Law in support of their motions and in opposition to defts' cross-motion for summary judgment.	
07-14-76	Filed Pltffs Rule 9(g) Statement.	
07-15-76	Filed in Court- affdvt. of Michael S. Cecere, Ass't Corp. Counsel, dated 7-14-76 in opposition to motion by pltffs. for injunction, pendente lite.	
07-17-76	Filed Opinion # 44782 and Order--for the reasons stated, there being no just cause for delay, partial summary judgment is granted as to the seniority status of the 38 female former police officers who took the October, 1969 exam and received a grade of 87% or higher. Rule 54(b) FRCP. The defts. are hereby enjoined from rehiring from a seniority roster which does not reflect the proper status of these 38 women. Defts' cross-motion for summary judgment is denied. It is so ordered- DUFFY, J. (m/n)	
	(CONT'D — PG. #4 (OVER)	

DATE	PROCEEDINGS	Date Or Judgment
07-27-76	Filed Memorandum and Order-Opinion # 44782 -- my opinion and order of 7-17-76 is amended to include the appearance as indicated. So ordered- DUFFY, J. (m/n)	
08-04-76	Filed stip & order-- for the purposes of rehiring under the LEAA grant the seniority date of the 38 memebers of the class for whom partial summary judgment has been granted shall be fixed at 5-8-70-- as provided in paragraph "1" shall constitute compliance, etc. that the " defts. are hereby enjoined from rehiring from a seniority roster which does not reflect the proper status of these 38 women," etc..-- that in accordance with paragraphs "1" and "2" shall not constitute a determination or waiver of any claims or rights defts. or pltffs. may possess with respect to permanent reinstatement and/or back pay and /or retroactive pension contributions, etc.. So ordered- DUFFY, J.	
08-04-76	Filed Order and Partial Summary Judgment-- that the motion of the pltffs. to certify the class is hereby granted and that the action shall be maintained as a class action under Rules 23 (a) and 23(b)(2)FRCP on behalf of the pltffs. and of all female police officers whose employment with the N.Y.City Police Dept. was terminated on or after 6-30-75 solely for budgetary reasons--that the parties submit proposed orders and memoranda in support thereof on the question of notice to the members of the class-- that the cross-motion of the defts. for summary judgment is denied--that the motion of the pltffs. for counsel fees is denied at this time without prejudice to the renewal at a later point-- that the motion of the pltffs. for summary judgment is granted as to the seniority status of the members of the class as indicated who took the October 1969 N.Y.City Police Dept. Examination No. 9081 for the position of Police Woman and received a grade of 87% or higher and who were less than 21 years of age on 5-8-1970 (hereinafter referred to as " the 38 members of the class")--that pltffs' motion for summary judgment is denied at this time with respect to members of the class other than the 38 members of the class, and that the remaining claims of all members of the class shall be referred to Renee Roberts, a Special Master, appointed by this Court-- that the defts. are hereby directed and ordered to fix and set the seniority of each of the 38 members of the class at a date no later than 5-8-70, etc.. that the motion of the pltffs for a preliminary injunction is denied at this time, etc.. that the defts. are hereby enjoined from rehiring any police officers from a seniority roster which does not reflect the proper status of the 38 members of the class as hereinbefore provided-- and that all other aspects of relief sought by pltffs. are deferred for future resolution or determination. DUFFY, J. Judgment entered-8-4-76 Clerk (m/n)	
08-31-76	Filed Defts NOTICE OF APPEAL to USCA 2nd Circuit from order and partial summary judgment entered on 8-4-76 by Duffy.J. m-copy to: Murray A.Gordon,Esq. 666 Third Ave.NYC 10017.	
09-07-76	Filed Defts' Supplemental Memorandum of Law.	
09-07-76	Filed Pltffs' Reply supplemental Memorandum of Law.	
09-10-76	Filed Pltffs Notice of Entery of True Copy of Judgment with statement of taxed costs.	
9-21-76	Filed transcript of record of proceedings dated July 15, 1976	
9-21-76	Filed Oath of special Master.	
09-22-76	Filed Pltffs' Supplemental Memorandum of Law.	
10-13-76	Filed transcript of record of proceedings dated 9-21-76	
10-12-76	Filed true copy of USCA order dismissing the appeal.	
11-16-76	Filed transcript of record of proceedings dated 10-13-76	

(CONT'D — PG. #5)

DUFFY, J

KET CONTINUATION SHEET

F	DEFENDANT	
ACHA, GERALDINE L. AND EGAN, ARLENE M. etc.	BEAME, ABRAHAM D., etc. et al	DOCKET NO. 75-3128 PAGE 5 OF 5 PAGES

DATE	NR.	PROCEEDINGS
12-06-76		Filed Order-- that individual Notice shall be mailed to all alleged members of the pltffs' class on or before 12-7-76 in the form and manner attached to this Order and made part hereof of Exhibit "A" and that all alleged members of the pltffs' class who request exclusion by mailing the request for exclusion form, attached to this Order and made a part hereof as Exhibit "B" to the Special Master, Renee Roberts, at 575 Madison Ave., New York N.Y. 10022 postmarked on or before 12-24-76, etc.. DUFFY, J. (m/n)
12-06-76		Filed pltffs' affdvt. of Murray A. Gordon re: services in connection with pltffs' motion for reasonable atty's fees and expenses. (Rec'd in Unit- 12-06-76)
12-06-76		Filed memo endorsed on affdvt. filed 12-06-76. For the reason stated, the figure of $67,847.48 for fees and $4,365.94 for expenses is reasonable and is , therefore, approved. Defts. are directed to make full payment within 45 days. I t is so ordered- DUFFY, J. (m/n)
12-13-76		Filed pltffs' notice of entry of endorsement filed 12-06-76.
1-28-77		Filed defts objections to interim report of Special Master dtd.1-17-77....
1-**27-77		Filed pltffs objections to findings of Special Master...
02-01-77		Filed Pltffs'Notice of motion for an order pursuant to Rules 6(d) a 53(e)(2) FRCP adopting the findings contained in the intermi report of Special Master dated and filed on 1-17-77,etc. RET: 2-17-77.
02-01-77		Filed Pltffs' Memorandum of Law following the first intermin report of Special Master.
02-09-77		Filed Defts Notice of Cross-Motion for an order sustaining defts' general and specific objections to interim report of special master dated:1-17-77,vacating findings of master and denying pltffs' claims,etc.RET: 2-16-77.
02-10-77		Filed defts' memorandum of law as to the first interim report of the Special Master.
02-14-77		Filed pltffs' reply memorandum of law following the first interim report of the Special Master.
02-14-77		Filed pltffs' proposed findings and conclusions.
02-16-77		Filed interim report of Special Master.
02-16-77		Filed letter dated 01-26-77 from Renee J. Roberts to Duffy, J. re: typographical or transcription errors in interim report.
02-16-77		BEFORE DUFFY, J. -- Hearing begun on objections to interim report of Special Master and adjourned to 03-02-77
02-25-77		BEFORE DUFFY - CONFERENCE HELD - Opinion Rendered By the Court - See Transcript Dated This Day.
02-28-77		Filed Memorandum of the Equal Employment Opportunity Commission in opposition to Deft's objections to the special master's interim report.
03-02-77		BEFORE DUFFY, J. - Hearing Cont'd from 2/16/77 Re: Obj. to Interim Report of Special Master.

(CONT'D --PAGE # 6-- OVER)

CIVIL DOCKET CONTINUATION SHEET

PLAINTIFF	DEFENDANT	A 6
ACHA, BERALDINE L. ETC.ETAL	BEAME,ABRAHAM D. ETC.ETAL	DOCKET NO. ______ PAGE 6 OF 6 PAGES

DUFFY, J

DATE	NR.	PROCEEDINGS
03-08-77		Filed Order-- that the defts. and/or their agents, etc. permit and allow all members of the class of pltffs. to take and particippte on a conditional basis in any make-up promotional examination given by the defts, etc. for the position of Sergeant in the Police Dept. during the course o f this litigation, subject to the determination of the entitlement of the class members to a revised seniority date and/ or reinstatement to the N.Y. City Police Dept. So ordered- DUFFY, J. (m/n)
03-10-77		Filed Pltffs Affidavit and Notice of motion for an order to amend findings of Court and/or to make additional findings,etc. RET:3-14-77
03-14-77		BEFORE DUFFY - CONFERENCE HELD & CONCLUDED.
03-18-77		Filed City Deft Affidavit in connection with the application of Renee J.Roberts,Special Master,for interim fees. etc. by Michael S.Cecere.
03-18-77		Filed application of Special Master for interim fees.
03-18-77		Filed memp endorsed on applicated filed 3-18-77. The within application for interim fees requested by the Special Master appears in all respects reasonable and appropriate. The interim fees are allowed and the deft. is directed to pay them forthwith. DUFFY, J. (m/n)
03-21-77		Filed pltffs notice of motion for an order adopting the findings of the Special Master that the seniority dates of the class members named be revised as indicated.. RET. 3-23-77
03-21-77		Filed Pltffs' objections to findings of the special master Dated:3-18-77.
03-25-77		Filed Order and Judgment-- that the pltffs' motions (1),(6), (7) and (8) are hereby granted, etc.. and the findings of the Special Master with respect thereto are hereby adopted--that pltffs' motions (4)&(5) are denied--that the pltffs' motions (2) and(3) are deferred for future determination--that the defts' cross-motions are granted to the extent as indicated.. etc..DUFFY,J. Judgment entered-3-28-77. Clerk (m/n)
03-31-77		Filed Defts Notice of Cross-motion for an order sustaining defts' general and specific objections to intermin report of Special master dated:3-18-77.RET:3-23-77.
03-31-77		Filed Special Master (Renee J.Roberts) second intermim report.
03-31-77		Filed Defts' Findings of fact and conclusions of law. X
03-31-77		Filed letter of The City of N.Y. Law Dept.Municipal Bldg.NYC to Duffy Dated:3-25-77. X
03-31-77		Filed letter of Israel and Roberts,Esqs, to Duffy,J Dated:3-24-77. X
03-31-77		Filed Defts' objections to the findings of the special master in her second interim report. X
04-06-77		FILED TRANSCRIPT OF RECORD OF PROCEEDINGS DSTED: 2-16-77.
04-06-77		FILED TRANSCRIPT OF RECORD OF PROCEEDINGS DATED: 2-25-77.
04-11-77		Filed pltffs. Beraldine L. Acha and Arlene M. gan,and all others similarly situated, members of the class of pltffs. notice of appeal to USCA from an order and judgment enotred on 3-25-77. Copy to: W. Bernard Richland, Corporation Counsel, Municipal Bldg., New York, N.Y. 10007 . Dnt. 4-12-77

CONTINUED ON PAGE NO. 7.

DC-111A REV (1/75)

CIVIL DOCKET CONTINUATION SHEET

PLAINTIFF	DEFENDANT	75 CIV 3128 DOCKET NO.
ACHA, BERALDINE L. ETAL	BEAME, ABRAHAM D. ETC. ETAL	PAGE 7 OF _ PAGES

DATE	NR	PROCEEDINGS DUFFY, J
04-12-77		Filed City Defts affidavit in opposition to pltffs' motion to amend and/or to supplement the previous finding.etc. by Judith A. Levitt
04-15-77		Filed pltffs' second supplemental memorandum of law.
04-29-77		Filed Deft Police Dept.City of New York's Affidavit.by Michael J. McNulty,doputy inspector.,re:budget cuts....
04-29-77		Filed Defts' Second supplemental Memorandum of Law.
04-29-77		Filed Defts Affidavit in opposition to pltffs' claim for retroactive pension contributions to be made by City etc. by Jonathan Schwartz.
05-05-77		Filed pltffs' (5-5-77) Reply memorandum of law.
05-10-77		BEFORE DUFFY,J- CONFERENCE HELD AND CONCLUDED.
05-16-77		Filed true copy of USCA stip & order that the appeal is withdrawn without costs and without prejudice to the reinstatement and reinstitution of said appeal as indicated.
05-16-77		PRE-TRIAL CO [illegible] D BY DUFFY, J.
05-18-77		Filed transcript of record of proceedings, dated 2-16-77
05-18-77		Filed Memorandum and Order-- for the reasons stated, the City is directed to submit the cases of the three pregnant class members to the Chief Surgeon to be determined by the same department standards used for women already in service. So ordered- DUFFY, J. (m/n)
05-19-77		BEFORE DUFFY, J. Conferenceheld and concluded.
05-23-77		Filed Supplemental Order-- the order which this Court entered on 5-18-77 was based on the assumption of facts by me which the parties have now stipulated were in error. The Memorandum and Order of 5-18-77 is hereby vacated. So ordered- DUFFY, J. (m/n)
05-24-77		Filed letter dated 5-16-77 from Murray A. Gordon, P.C. by: Kenneth E. Gordon to Duffy, J.
06-07-77		PRE-TRIAL CONFERENCE HELD BY DUFFY, J
06-20-77		Filed special master's notice of second application for interim fees:RET:6-10-77.
06-20-77		Filed memo endorsed on special master's notice filed 6-20-77.......... Motion granted.the deft City of New York is directed to pay the interim fees of the Special Master.It is so ordered.DUFFY,J m-n
06-23-77		Filed defts' affdvt. of Judith A. Levitt requesting Court reconsider its order of 6-20-77 and direct pltffs to pay the fees of the Special Master.
06-28-77		Filed Defts Affidavit and notice of motion for an ordervacating so much of a prior judgment and order entered 8-3-77,as refers to and grants relief to Carol S.Kranick,member of pltff class,etc. RET: 7-8-77/
07-06-77		Filed transcript of record of proceedings, dated 5-16-77
07-06-77		Filed pltffs' notice of motion for an order adopting the findings of the Special Master dated and filed on 6-27-77 and 7-5-77 that the seniority dates of the class members as indicated be revised, etc.. as indicated. RET.7-14-77
07-06-77		Filed pltffs' objections to findings of the Special Master dated 6-27-77 and 7-5-77.

(CONTINUED PO # 8-- OVER)

CIVIL DOCKET CONTINUATION SHEET

PLAINTIFF	DEFENDANT	DOCKET NO 75-3128 PAGE 8 OF ___ PAG

(DUFFY, J.)

DATE	NR.	PROCEEDINGS
07-08-77		Filed affdvt. of Maureen Kempton, member of class rep resented by pltffs.
07-08-77		Filed pltffs' affdvt. of Murray A. Gordon in opposition to defts' motion to Rules 56 and 60 FRCP to renew their cross-motion for summary judgment.
07-08-77		Filed pltffs' 7-8-77 Memorandum of law.
07-12-77		Filed pltffs' Rule 9(g) Statement.
07-13-77		Filed defts' reply affdvt. of Judith A. Levitt in response to pltffs' affdvts. in opposition to defts' motion pursuant to Rules 56 and 60 FRCP.
07-13-77		Filed defts' reply memorandum of law.
07-13-77		Filed defts' notice of motion for an order pursuant to Rules 6 (d) and 53 (e) (2) FRCP adopting the findings of the special master dated 6-27-77 and 7-5-77, etc Sustaining the objections of the defts. to the findings of the Special Master as indicated, etc.. RET. 7-14-77
07-13-77		Filed defts' affdvts. and notice of motion for an order to renew defts' cross-motion pursuant to Rules 56 and 60 for summary judgment... RET.
07-13-77		Filed defts' memorandum of law in support of motion to renew cross-motion for summary judgment.
07-13-77		Filed defts' Rule 9(g) Statement.
07-13-77		Filed defts' affdvt. of Paul L. Brennan in reply to pltffs' opposition to defts' motion pursuant to Rules 56 and 60 FRCP.
07-13-77		Filed pltffs' notice of motion for an order pursuant to Rules 6(d) and 53 (e)(2) FRCP sustaining the objections of the pltffs. to the Findings of the Special Master eith reppect to the named members as indicated of the class pltffs, etc.
07-13-77		Filed pltffs' objections to Findings of the Special Master dated 7-11-77.
07-15-77		Filed The Equal Employment Opportunity Commission's Memorandum in opposition to deft's motion for summary judgmemt.
07-15-77		Filed defts' notice of cross-motion for an order pursuant to Rules 6(d) and 53(2) (2) FRCP adopting the findings of the Special Master dated and filed 7-12-77 that the claims of the indicated pltffs. should be denied and sustaining the Objections of the defts. to the Findings of the Special Master with respect to the indicated pltffs., etc... RET. 7-15-77
07-19-77		Filed pltffs8 rebuttal affdvt. of Murray A. Gordon to the reply affdvts. of Judith Levitt and Paul L. Brennan.
07-26-77		Filed stip & order that the pltffs. withdraw their opposition to defts' motion pursuant to Rule 60 FRCP as against class member, Carol S. Kranick and that the defts. shall remove class member Carol S. Kranick from her position as a Police Officer in the N.Y.City Police Dept. immediately and place her name upon the preferr ed list for reinstatement as indicated, effective 7-15-77. So ordered- DUFFY, J.

(CONT'D — PG. #9)

DATE	NR.	PROCEEDINGS
07-28-77		Filed Opinion #46223 and Order-- for the reasons stated, I am directing Special Master Roberts, who has already presided over 150 hearings in this case, to hear and report on the factual questions presented herein. Commencement of the hearing must first await a resolution on the McCain issue. The City defts' motion to vacate partial summary judgment heretofore entered for some pltffs. is granted but the injunctions entered on behalf of these pltffs. will stand as a preliminary injunction. The defts' cross-motion for summary judgment is denied, without prejudice to its renewal, along with a motion addressed to the McCain amendments. The pltffs' application for further preliminary injunction is denied. The factual determinations of the Special Master in the Third, Fourth and Fifth Interim Reports are confirmed but the case of class members found entitled to revised seniority are remanded for new findings and conclusions consistent with this opinion. Pltffs' motion pursuant to Rule 52(b) alon with all other questions of Title VII relief raised in its 5-10-77 motion, are stayed pending trial. All other relief requested by the parties is denied. So ordered- DUFFY, J. (m/n)
07-29-77		Filed EEOC's points and authorities on the effect of the McCaine charge.
08-02-77		Filed pltffs' notice of appeal to the USCA from the order entered on 7-28-77 as indicated. Copy mailed to: Corporation Counsel, City of N.Y. Ent. 8-2-77
08-04-77		Filed Order-- that in view of the fact that the defts. intend to rehire people for the Police Force and these are eleven women who would otherwise be eligible to be rehired, a stay will issue as to these eleven positions until such time as the matter may be heard and decided by the Court of Appeals of this circuit. So ordered- DUFFY, J. (m/n)
08-05-77		Filed pltffs' notice of deposition upon oral examination of deft. Abraham D. Beame on 8-11-77
08-05-77		Filed pltffs' notice of deposition upon oral examination of deft. Michael J. Codd on 8-12-77
08-18-77		FILED TRANSCRIPT OF RECORD OF PROCEEDINGS DATED: 7-22-77.
08-19-77		Filed defts notice of motion and affidavit for order vacating pltff notices of deposition, ret. 8-19-77 at 4PM.
08-23-77		Filed Pltffs Affidavit in opposition to motion of defts for a Rule 26(c) FR Civ.P. protective order. by Murray A.Gordon.
8-23-77		PTC held Judge Duffy
08-25-77		Filed ANSWER of defts to the complaint.
8-26-77		Filed stipulation that copies of missing documents be transmitted to USCA in lieu of missing originals.
8-26-77		Filed stipulation that the record on appeal shall consist of the documents listed on the stipulation numbering 48.

Complaint

UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF NEW YORK
--X

BERALDINE L. ACHA and ARLENE M. EGAN,
each individually and on behalf of all
others similarly situated,

Plaintiffs,

-against-

ABRAHAM D. BEAME, individually and in
his capacity as Mayor of the City of
New York, MICHAEL J. CODD, individually
and in his capacity as Police Commissioner
of the New York City Police Department,
and THE CITY OF NEW YORK, as a public
employer,

Defendants.
--X

COMPLAINT

CLASS ACTION
75 Civ. 3128

Preliminary Statement

1. This is a class action for declaratory and injunctive relief pursuant to 28 U.S.C. §§2201 and 2202, respectively and 42 U.S.C. §§1983 and 2000e-2, to protect plaintiffs herein and the class which they represent from deprivation of certain rights, privileges and immunities secured by the Due Process and Equal Protection Clauses of the Fourteenth Amendment of the United States Constitution. Injunctive relief is sought to enjoin defendants from terminating the employment of any female Police Officers employed by the New York City Police Department. Declaratory judgment is sought declaring that the proposed actions of the defendants in terminating the employment of female Police Officers employed by the New York City Police Department are unconstitutional and void as applied to plaintiffs and all

other similarly situated female Police Officers.

Jurisdiction

2. Jurisdiction is conferred upon this Court by 28 U.S.C. §§1343(3) and 1343(4), providing for jurisdiction in this Court for an action to address the deprivation, under color of state law, of rights, privileges and immunities guaranteed by the Constitution of the United States and to secure injunctive and declaratory relief authorized by 42 U.S.C. §§1983 and 2000e-2. This is an action seeking redress for the deprivation of the constitutional and civil rights of plaintiffs named herein and all others similarly situated, as secured under and guaranteed by the Fourteenth Amendment to the Constitution of the United States and under 42 U.S.C. §§1983 and 2000e-2.

3. This Court is authorized by 42 U.S.C. §§1983 and 2000e-e to grant the relief herein requested.

Class Action Allegations

4. Plaintiffs bring this action, on behalf of themselves and all other female Police Officers similarly situated, as a class action pursuant to Federal Rule of Civil Procedure 23(a) and 23(b)(2). The plaintiffs are members of a class containing approximately 450 members, which class is so numerous as to make joinder impracticable, composed of female Police Officers who have received or will receive notices that their employment with the New York City Police Department will be terminated on June 30, 1975.

5. Each plaintiff and member of the class is an adult female citizen of the United States who holds a permanent appointment in the classified civil service of the City of New York and is employed by the defendants as a Police Officer in the New York City Police Department.

6. The Plaintiffs named herein will fairly and adequately protect the interests of the class in that their mutual and separate claims are typical of the individual claims of the members of the class, there are no conflicts of interest among the members of the class, and there are questions of law and fact common to the class.

7. Final injunctive and corresponding declaratory relief with respect to the class as a whole are appropriate in that defendants are acting on grounds, challenged by plaintiffs named herein, generally applicable to the class.

8. The defendants have acted and proposed to act on grounds generally applicable to the class, thereby making appropriate final injunctive relief and corresponding declaratory relief with respect to the class as a whole; to wit, they have notified the plaintiffs that their employment with the New York City Police Department will be terminated on June 30, 1975.

Parties

9. The plaintiffs in the action are:

A. Beraldine L. Acha, who resides at 10 Waterside Plaza, New York, New York 10010, is a Police Officer with the New York City Police Department and has served therein since

May 29, 1973. She is presently married, and earns the same amount of money as her husband, approximately $13,000 a year. Beraldine L. Acha provides the sole support for her 9 year-old son by a previous marriage, of whom she has custody. She received notice on June 24, 1975 that her employment with the New York City Police Department will be terminated on June 30, 1975.

B. Arlene M. Egan, who resides at 80-20 249 Street, Bellerose, New York, 11426, is a Police Officer with the New York City Police Department and has served therein since June 25, 1973. She is divorced and has custody of her 14-year old son, whom she supports. Her salary of approximately $13,000 is her sole source of income.

10. The defendants in the action are:

A. Abraham D. Beame, individually and in his capacity as Mayor of the City of New York.

B. Michael J. Codd, individually and in his capacity as Commissioner of the Police Department of the City of New York.

C. The City of New York, a municipal corporation duly incorporated under the laws of the State of New York, and the public employer of plaintiffs and each member of the class.

Factual Allegations

11. Commencing on or about May 21, 1975, plaintiffs, and members of their class, were notified that their services with the New York City Police Department are to be terminated on June 30, 1975. The defendants plan to terminate the services of 5,000 Police Officers. As of June 24, 1975, 4,000 notices had

been given; approximately 371 to femal Police Officers. When the final 1,000 notices are given, it is expected that all of the approximately 450 female Police Officers appointed since January of 1973 will be terminated. A copy of the notice served on plaintiff Arlene M. Egan, which is identical in substance with each such notice served on or to be served on the plaintiffs and all of the members of their class, is annexed hereto as Exhibit "A" and made a part hereof.

12. There are currently approximately 30,374 members of the uniformed force of the New York City Police Department and of these there are approximately 21,669 males in the rank and title of Police Officer and 618 females in said rank and title. A copy of the Sworn Personnel Data Report of the New York City Police Department, dated June 12, 1975 is attached hereto as Exhibit "B" and made a part hereof. There are approximately 724 women currently employed in the uniformed force of the Police Department.

13. Prior to January of 1973 there was a quota of approximately 354 women to be employed in toto in the uniformed force of the Police Department, with 223 women in the title of Policewoman. Copies of the Sworn Personnel Data Reports of the New York City Police Department dated December 28, 1972 and February 1, 1973 are attached hereto as Exhibits "C" and "D" and made a part hereof. The quota was not lifted until February of 1973. Copies of the Sworn Personnel Data Reports of the New York City Police Department dated February 8, 1973 and July 5, 1973 are attached hereto as Exhibits "E" and "F" and made a part hereof.

Complaint

14. Prior to 1973, women in the Police Department served in the title of Policewoman and men served in the title of Patrolman. It was only in 1973 that the two titles were merged into the title of Police Officer.

15. Prior to 1973, the vast majority of women appointed to the Police Department were initially assigned to the Bureau of Policewomen, where men were assigned to precincts throughout the City.

16. Prior to 1969 different examinations were given for the position of Policewoman and Patrolman. An examination for the position of Policewoman was given in 1964 and another one in 1969. Examinations for the position of Policewoman were given approximately every four years. During the same period of time several examinations were given for the position of Patrolman.

17. In 1969 two examinations were given; No. 9080 for the title of Police Trainee/Patrolman, and No. 9081 for the title of Policewoman, See attached Exhibits "G" and "H".

18. Although two separate examinations were announced and the examinations were administered separately, the examination questions were the same and the examinations were graded in the same fashion. Separate eligible lists were, nevertheless, established as a result of the two examinations.

19. As Exhibit "G" and "H" show, and as was applied in practice, Examination No. 9080 was open only to men who were 16 years of age on the date of the written examination and

17 years of age on the date of appointment. Such men were eligible for the position of police trainee, which position would evolve into the position of Patrolman upon the reaching of the 21st birthday. On the other hand, Examination No. 9081 for the position of Policewoman was open to women not less than 19 years of age on the date of the written examination. There was no trainee position made available to women.

20. There was a job freeze on hiring by the New York City Police Department in effect from approximately 1970 to January 1973. During this period of time there were no appointments made directly to the positions of Patrolman or Policewoman, although males who had passed previous examinations and were at the Police Academy in a position of police trainee were appointed to the Police Department at this time.

21. When the job freeze was lifted in January 1973, it was determined by the then Police Commissioner Patrick J. Murphy, that men and women should be appointed from separate lists on a ratio of four men to one woman, regardless of comparative grades on the examinations. Although all the women appointed to the Police Department subsequent to January 1973 were appointed from a list established as a result of Examination No. 9081, men were appointed from five different lists.

22. On information and belief it is alleged that men were appointed to the title of Police Officer prior to women who had taken the same 1969 examination and received higher grades.

23. Since January 1973 approximately 4,236 male Police Officers have been appointed and approximately 513 female Police Officers have been appointed to the Police Department

24. In January of 1973 the titles of Patrolman and Policewoman were merged into the title of Police Officer. Men and women appointed to the Department subsequent to 1973 underwent the same medical examination and received the same training at the Police Academy.

25. Both plaintiffs Acha and Egan were willing and qualified to take an examination for Policewoman and/or Police Officer subsequent to 1964 and prior to 1969, but no such examination was open to them.

26. Under New York Civil Service Law §85 additional credit is allowed to veterans. on competitive examinations. Prior to recent amendment of federal law, men were subject to involuntary draft into the armed services of the United States and women were not. Presently neither men nor women are subject to involuntary draft.

27. The termination notices sent to plaintiffs and members of their class are purportedly in conformity with the inverse order of original appointment on a permanent basis.

28(a) The proposed termination of employment of the plaintiffs and members of their class would result in a disproportionate impact on the number of women in and employed by the New York City Police Department. It would result, in many cases, to the loss of a sole source of income for plaintiffs and members of their class. Furthermore it would result in discrimination on the basis of sex.

28(b)
The action of defendants herein complained of is facially, patently and statistically discriminatory, to wit:

CHART #1

COMPOSITION OF POLICE DEPARTMENT AS OF DECEMBER 28, 1972

# of Female Police Officers	Approximate Size of Uniformed Force	% of FPO
223 (active)	29,532 (active)	00.75% (active)
290 (quota)	30,816 (quota)	00.94% (quota)

CHART #2

COMPOSITION OF POLICE DEPARTMENT AS OF JUNE 12, 1975

618 (active)	30,374 (active)	2.03% (active)
quota unknown	35,219 (quota)	

CHART #3

COMPOSITION OF POLICE DEPARTMENT AS OF JULY 1, 1975

Total Unif. Force	# of Female Police Officers	# of Male Police Officers	% Female Police Officers
26,374	347	18,040	1.32%

CHART #4

APPOINTMENTS TO POLICE OFFICER: JANUARY 1973 TO DATE

# of Male Police Officers	# of Female Police Officers	Total	% Female Police Officers
4,246	513	4,759	10.78%

CHART #5

PERCENTILE REDUCTION IN POLICE OFFICERS TOTAL BY SEX

Female Police Officers Term.	Female Police Officers As of June 1975	% of Female Police Officers Term.
371	618	60.03%

Male Police Officers Term.	Male Police Officers As Of June 1975	% of Male Police Officers Term.
3,629	21,669	16.75%

29. The resultant loss, damage and injury to the plaintiffs and the members of their class would be serious and irreparable for which there is no adequate remedy at law.

30. On or about June 25, 1975, plaintiffs duly filed complaints with the New York City Commission on Human Rights and the United States Equal Employment Opportunity Commission, which in substance, fact and law sets forth claims as those hereinbefore stated. A copy of the complaints duly filed with the New York City Commission on Human Rights is annexed hereto as Exhibit "I" and made a part hereof. A copy of the complaints duly filed with the United States Equal Employment Opportunity Commission is annexed hereto as Exhibit "J" and made a part hereof. Upon information and belief, no action can or will be taken by the respective agencies for or on behalf of plaintiffs herein prior to June 30, 1975, whereupon plaintiffs and/or the members of the class will be irreparably injured by defendants action herein at issue.

31. There has been no previous application by the plaintiffs for the relief sought herein.

The Violations of Law

32. The actions of the defendants in including plaintiffs and members of their class in the proposed terminations based on inverse order of seniority is not necessitated by business necessity and will perpetuate previous and invidious sex discrimination practiced by the defendants. It will result in irreparable injury to plaintiffs and members of their class, since they will suffer discrimination on the basis of sex and lose the ability to support themselves and their families, which injuries will be in violation of the Due Process and Equal Protection Clauses of the Fourteenth Amendment to the United States Con-

stitution and 42 U.S.C. §§1983 and 2000e-2.

33. Each plaintiff and member of the class has no adequate remedy at law and defendants are threatening them with irreparable injury and will cause them and all other similarly situated irreparable injury unless enjoined by this Court.

Prayer for Relief

WHEREFORE, plaintiffs respectfully pray on behalf of themselves and all others similarly situated that this Court:

A. enter a declaratory judgment declaring that the proposed termination of employment of plaintiffs and each member of the class herein violates the Due Process and Equal Protection Clauses of the Fourteenth Amendment of the United States Constitution and 42 U.S.C. §§1983 and 2000e-2;

B. make and enter a permanent injunction, and pending the hearing and determination of this action, a preliminary injunction restraining, prohibiting and estopping the defendants, and their servants, agents and employees from continuing the policies and practices of the defendants, including, but not limited to, the proposed termination of employment of the plaintiffs and members of their class as hereinbefore set forth, in violation of the Due Process and Equal Protection Clauses of the Fourteenth Amendment of the United States Constituion and 42 U.S.C. §§1983 and 2000e-2;

C. allow plaintiffs their costs and disbursements herein as well as reasonable attorneys fees;

D. grant such other and further relief as may be proper.

MURRAY A. GORDON, P.C.
Attorneys for Plaintiffs

BY:
MARINA ANGEL
Office & P.O. Address
666 Third Avenue
New York, N.Y. 10017
Tel.No. 212-661-7900

The City of New York

POLICE DEPARTMENT

Exhibit A to Complaint

June 20, 1975

Dear Officer Arlene Egan:

Mayor Beame joins me in expressing our profound regret and deep personal concern that the City's fiscal crisis requires us to lose your valuable services at this time. Your termination is effective June 30, 1975.

Your name is being placed on a preferred list and you will be eligible to be rehired when fiscal conditions improve.

A Job Referral Service has been established in the Employment Division of the Department. This service will coordinate with other City agencies and with the private sector in seeking employment for you. You can avail yourself of this service by calling 374-6818. You will be given all possible assistance in obtaining employment.

We hope this service will be of help to you in these trying circumstances.

Sincerely,

Michael J. Codd

Michael J. Codd
POLICE COMMISSIONER

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Exhibit B to Complaint

SWORN PERSONNEL DATA

P D 106-051 R

	RANK	SUSPENDED	BUDGET QUOTA	WORKING QUOTA	ACTIVE	LEAVE OF ABSENCE WITH PAY	TERMINAL LEAVE ON LINE	VACANCY	LEAVE OF ABSENCE WITHOUT PAY OVER 90 DAYS	LEAVE LUMP SUM LINE
C	Of Operations		1	1	1					1
H	Field Services		1	1	1					
I	Detectives		1	1	1					
E	Inspectional Services		1	1	1					
F	Organized Crime Control		1	2	1				1	
	Assistant		15	15	14			1		
	Deputy		23	23	23					
	Chief of Personnel		1	1	1					
	Inspector		43	44	42		1		1	
	Deputy		101	102	100		1		1	
	Captain		365	365	345		8	11	1	
				1						
L	Director Legal Bureau		1	+1CJCC	1					
T	Special Assignment		15	15+1MC	15					
	Commander Detective Squad		65	65	55		1	8	1	
S	Lieutenant		1,017	1,017	973	1	5	38		
S	Special Assignment		22	23+1CJCC	22				1	
G	Supervisor Detective Squad	1	95	95	85		2	6	2	
T	Sergeant	5	2,854	2854+4MC	2,726	1	12	109	6	
D	First Grade — Male		165	165	123		3	56		
E	Female				3					
T	Second Grade — Male	1	682	682	553		7	113	2	
	Female			+1CJCC	7					
S	Third Grade — Male		2,982	2,982	2,876		20	29	5	
	Female				52					
P	Special Assignment		77	77	35			42		
O	Male	40	26,658	26,658	21,669	1	105	4,234	15	
	Female				618				16	
S	Chief		1	1	1					
U	Deputy Chief		1	1	1					
R	Surgeon		29	29	29					
TOTAL		47	35,219	35,221	30,374	3	165	4,637	52	1

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Exhibit C to Complaint

PD105—051 (8-72)

DATE

Fld. Thursday, Dec. 28, 1972

SWORN PERSONNEL DATA

RANK	BUDGET QUOTA	WORKING QUOTA	FILLED POSITIONS ACTIVE	FILLED POSITIONS LEAVE OF ABSENCE WITH PAY	FILLED POSITIONS TERMINAL LEAVE ON LINE	VACANCY	LEAVE OF ABSENCE WITHOUT PAY OVER 90 DAYS	TERMINAL LEAVE LUMP SUM LINE
Chief Inspector	1	1	1					
Chief of Patrol Services	1	1	1					
Chief of Detectives	1	1	1					
Chief of Inspectional Services	1	2	1					1
Chief of Organized Crime Control	1	2	1					1
A.C.I.	14	16	14				1	2
[illegible]	24	26	24					2
Inspector	43	49	44					5
Deputy Inspector	101	114	101					13
Captain	364	364	356	1	7			
Dir. Legal Bureau	1	1	1					
Dir. Policewomen	1	1	1					
Lt.—Special Assignment	15	[illegible]	15					
Lt.—Commander Det. Sqd.	65	66	61		5			
Lieutenant	1,017	1017	1003		12	2		
Sgt.—Special Assignment	22	22	21		1			
Sgt.—Supervisor Det. Sqd.	95	95	91		4			
Sergeant 2604	[illegible]	2604+[illegible]	2556		[illegible]	33	5	
Detective First Grade—Male	231	231	209		1	25		
Detective First Grade—Female	4	4	3			1		
Detective Second Grade—Male	832	832	764		16	54		
Detective Second Grade—Female	11	11	8		1	2		
Detective Third Grade—Male	1,731	1731	1687		6	38		
Detective Third Grade—Female	50	50	48		2			
Patrolman—Special Assignment	77	77	77					
Patrolman	23,188	23,188	22,191		124	671	2	
Policewoman	290	290	223		2	62	3	
Chief Surgeon	1	1	1					
Deputy Chief Surgeon	1	1	1					
Surgeon	27	27	27					
TOTAL	30,815	30,660	29,532	1	197	1076	11	24

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Exhibit D to Complaint

SWORN PERSONNEL DATA

DATE
Mid. Thursday, Feb. 1, 1973

RANK	BUDGET QUOTA	WORKING QUOTA	FILLED POSITIONS			VACANCY	LEAVE OF ABSENCE WITHOUT PAY OVER 90 DAYS	TERMINAL LEAVE LUMP SUM LINE
			ACTIVE	LEAVE OF ABSENCE WITH PAY	TERMINAL LEAVE ON LINE			
Chief Inspector	1	1	1					
Chief of Patrol Services	1	1	1					
Chief of Detectives	1	1	1					
Chief of Inspectional Services	1	2	2					
Chief of Organized Crime Control	1	1	1					
A.C.I.	14	14	14				1	
D.C.I.	24	24	23					1
Inspector	43	47	43					4
Deputy Inspector	101	106	100					6
Captain	364	364	355	1	3	5		
Dir. Legal Bureau	1	2	2					
Dir. Policewomen	1	1	1					
Lt.—Special Assignment	15	[illegible]	15					
Lt.—Commander Det. Sqd.	65	65	61		4			
Lieutenant	1,017	1017	1003			13		
Sgt.—Special Assignment	22	22	21			1		
Sgt.—Supervisor Det. Sqd.	95	95	90		1	3	1	
Sergeant	2754 ~~[illegible]~~	2754+[illegible]	2633		5	111	5	
Detective First Grade—Male	231	231	207		2	22		
Detective First Grade—Female	4	4	3			1		
Detective Second Grade—Male	832	632	756		5	72		
Detective Second Grade—Female	11	11	8			3		
Detective Third Grade—Male	1,731	1731	1676		2	55		
Detective Third Grade—Female	50	50	48			2		
Patrolman—Special Assignment	77	77	74			3		
Patrolman	23,038	23,038	22,077		32	924	5	
Policewoman	290	290	224			63	3	
Chief Surgeon	1	1	1					
Deputy Chief Surgeon	1	1	1					
Surgeon	27	27	27					
TOTAL	30,816	30,824	29,466	1	55	1277	15	11

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Exhibit E to Complaint

SWORN PERSONNEL DATA

DATE Mid. Thursday, Feb. 8, 1973

RANK	BUDGET QUOTA	WORKING QUOTA	FILLED POSITIONS ACTIVE	LEAVE OF ABSENCE WITH PAY	TERMINAL LEAVE ON LINE	VACANCY	LEAVE OF ABSENCE WITHOUT PAY OVER 50 DAYS	TERMINAL LEAVE LUMP SUM LINE
Chief Inspector	1	1	1					
Chief of Patrol Services	1	1	1					
Chief of Detectives	1	1	1					
Chief of Inspectional Services	1	1	1					
Chief of Organized Crime Control	1	1	1					
A.C.I.	14	14	14				1	
D.C.I.	24	24	23			1		
Inspector	43	46	43					3
Deputy Inspector	101	105	100					5
Captain	364	364	355	1	3	5		
Dir. Legal Bureau	1	1	1					
Dir. Policewomen	1	1	1					
Lt.—Special Assignment	15	25+1 [illegible]	15					
Lt.—Commander Det. Sqd.	65	65	61		3	1		
Lieutenant	1,017	1017	1002		1	14		
Sgt.—Special Assignment	22	22	21			1		
Sgt.—Supervisor Det. Sqd.	95	95	90		2	3	1	
Sergeant 2654	[illegible]	2654+[illegible]	2622		5	212	5	
Detective First Grade—Male	231	231	205		4	22		
Detective First Grade—Female	4	4	3			1		
Detective Second Grade—Male	832	832	754		5	73		
Detective Second Grade—Female	11	11	8			3		
Detective Third Grade—Male	1,731	1731	1673		3	55		
Detective Third Grade—Female	50	50	48			2		
Patrolman—Special Assignment	77	77	73			4		
Patrolman	22,838	22,838	22,231		29	573	5	
Policewoman 350	2[illegible]	293	230			157	3	
Chief Surgeon	1	1	1					
Deputy Chief Surgeon	1	1	1					
Surgeon	27	27	27					
TOTAL	30,816	30,821	29,617	1	56	1127	15	8

A 27

Exhibit F to Complaint

PD105—051 (8 72)

DATE [illegible] THURSDAY, JULY 5, 1973

SWORN PERSONNEL DATA

RANK		BUDGET QUOTA	WORKING QUOTA	FILLED POSITIONS: ACTIVE	FILLED POSITIONS: LEAVE OF ABSENCE WITH PAY	FILLED POSITIONS: TERMINAL LEAVE ON LINE	VACANCY	LEAVE OF ABSENCE WITHOUT PAY OVER 90 DAYS	TERMINAL LEAVE LUMP SUM LINE
Chief Inspector		1	2	1					1
Chief of Patrol Services		1	1	1				1	
Chief of Detectives		1	1	1					
Chief of Inspectional Services		1	1	1					
Chief of Organized Crime Control		1	1	1					
[illegible]		14	17	15					2
D.C.I.		24	25	20					2
Inspector		43	44	45					1
Deputy Inspector		101	102	101					1
Captain		364	364	354	1	10	0	1	
Dir. Legal Bureau		1	1	1					
Dir. Policewomen		1	1	0			1		
Lt.—Special Assignment		15	[illegible]	15					
Lt.—Commander Det. Sqd.		65	65	55		6		1	
Lieutenant		1,017	1017	976		39	1	1	
Sgt.—Special Assignment		22	[illegible]	19		1	2		
Sgt.—Supervisor Det. Sqd.		95	95	87		4	5	1	
Sergeant	2254	[illegible]	[illegible]	[illegible]		42	17	7	
Detective First Grade—Male		231	231	176		12	43	1	
Detective First Grade—Female		4	4	3			1		
Detective Second Grade—Male		832	832	698		25	109	1	
Detective Second Grade—Female		11	11	7		1	3		
Detective Third Grade—Male		1,731	1731	1602		22	105	1	
Detective Third Grade—Female		50	50	47		1	1	1	
Patrolman—Special Assignment		77	77	70			7		
Patrolman		22,929	22,873	21,795		220	859	11	
Policewoman	379	[illegible]	380	354		3	25	8	
Chief Surgeon		1	1	1					
Deputy Chief Surgeon		1	1	1					
Surgeon		27	28	27		1			
	TOTAL	30,815	30,325	29,203	1	390	1103	35	7

Exhibit G to Complaint

[illegible]

(A 080)

PATROLMAN [illegible]

This examination is open only to men.

A single list will be established from this examination and appointments will be made to either Patrolman or Police Trainee (Police Department) depending on age.

Police Trainee is a trainee class of positions. A Police Trainee will receive a regular appointment as a Probationary Patrolman on reaching his 21th birthday, or as shortly thereafter as practicable, without taking any further written or physical tests, provided he has a satisfactory record as trainee and provided he passes a medical test identical to the one given to Patrolman candidates.

Salary, Vacancies and Benefits (Patrolman): The entrance salary is $9,499 per annum at present. Patrolmen receive increments of $221 at the end of their first year, $551 at the end of their second year and $679 at the end of their third year, in the Police Department. The salary reached through these increments is $10,950 per annum. Other benefits include an annual uniform allowance, 11 paid holidays annually, a generous annual leave, sick leave, membership in a liberal pension system, the Social Security System, a welfare fund, and a health insurance plan. There are many vacancies.

Police Trainee (Police Department): The entrance salary is $4,000 per annum. There will be an increment of $240 per annum after each year of trainee service up to a maximum of four increments. There will be a considerable number of positions in the Police Department under this program.

Many benefits are, or may be enjoyed by New York City employees. These benefits include generous annual leave, sick leave, membership in a liberal pension system, the Social Security System, a health insurance plan wholly paid for by The City of New York and the blood credit program.

Applications: *Filing Period* — Pre-application forms issued and received Monday through Friday from 9 a. m. to 5 p. m., except Thursday from 8:30 a. m. to 5:30 p. m., and Saturday from 9 a. m. to 12 noon from September 1, 1969 through September 23, 1969.

Pre-application forms are obtainable free either by the applicant in person or by his representative at the Application Section of the Department of Personnel at 49 Thomas Street, New York, N. Y. 10013. They will also be mailed on request provided that the request to the above section and address is accompanied by a stamped (6 cents) self-addressed 9½-inch envelope for each application requested. All such mail requests must be postmarked not later than September 16, 1969. A pre-application form submitted by mail must be received no later than the last day for receipt of pre-application forms.

Pre-application forms are also issued in person (but not received) at all branches of the public library systems in the various boroughs of New York City, Mount Vernon, New Rochelle, White Plains and Yonkers.

Regular applications will be issued and accepted for filing in person only at the time and place of the written test.

Date and Place of Test: The written test is expected to be held October 25, 1969. This date is tentative only and may be changed if circumstances so demand.

Promotion Opportunities: The Administrative Code provides that Sergeants shall be selected from among Patrolmen of the First Grade, Sergeants are eligible for promotion examination to Lieutenant; Lieutenants are eligible for promotion examination to Captain.

Time in service as a Police Trainee shall not be considered as service in the uniformed force for pension or retirement purposes, not in computing seniority in a promotion examination, nor in granting advancement in grade as a Patrolman.

Age Requirements (Patrolman): The Administrative Code provides that only persons shall be appointed Patrolman who shall be on the date of the written test less than 29 years of age; and the Public Officers Law provides that persons shall be at least 21 years of age at the time of appointment.

Exception: All persons who were engaged in military duty, as defined in Section 243 of the Military Law, subsequent to July 1, 1940, may deduct the length of time, not exceeding a total of six years, which they spent in such military duty from their actual age in determining their eligibility (Sub. 10a, Section 243, Military Law).

Police Trainee: Candidates must be at least 16 years of age on the date of the written test and at least 17 years of age at time of appointment.

At the time of investigation, applicants will be required to submit proof of date of birth by transcript of record of the Bureau of Vital Statistics or other satisfactory evidence. Any wilful misstatement may be cause for disqualification.

Minimum Requirements: At the time of appointment: (a) graduation from a four year senior high school course; or (b) possession of an acceptable high school equivalency diploma or U.S. Armed Forces Institute G.E.D. certificate (a score of at least 35 on each of the five tests and a total score of at least 225 in the examination for the diploma or certificate); or (c) certification of having passed the above examination with these scores.

[illegible]

Applicants for patrolman must be not less than 5 feet 7 inches [illegible] in height and meet appropriate normal weight for height. For appointment as Police Trainee, eligibles must meet this height requirement prior to appointment. Required vision 20/30 in each eye separately, without glasses.

At the time of appointment as a Probationary Patrolman, residence in New York City, or in Nassau, Westchester, Suffolk, Orange, Rockland, or Putnam Counties is required. Also at the time of appointment as a Probationary Patrolman, possession of a valid New York State motor vehicle operator's license is required.

Proof of good character will be an absolute prerequisite to appointment. The following are among the factors which would ordinarily be cause for disqualification: (a) conviction of an offense, the nature of which indicates lack of good moral character or disposition toward violence or disorder; (b) repeated conviction of an offense, where such convictions indicate a disrespect for the law; (c) repeated discharge from employment where such discharges indicate poor performance or inability to adjust to discipline; (d) addiction to narcotics or excessive use of alcoholic beverages; (e) discharge from the Armed Forces other than the standard honorable discharge. In accordance with the provisions of the Administrative Code, persons convicted of a felony are not eligible for positions in the uniformed forces of the Police Department. In addition, the rules of the City Civil Service Commission provide that no person convicted of petit larceny, or who has been dishonorably discharged by the Armed Forces shall be examined, certified or appointed as a patrolman.

The Police Commissioner has the right to appoint one out of three on each certification.

The rules of the City Civil Service Commission provide that no name shall be certified more than three times to the same appointing officer for the same or similar position, unless at such officer's request.

Those appointed as Probationary Patrolman must serve a probationary period of one year.

A Police Trainee will not be considered a member of the uniformed force or a peace officer.

Duties of Patrolman: To perform general police duties in the various branches of the department; to perform all additional functions for the rank prescribed by relevant laws, Rules and Procedures, orders or directives of the Police Department; and to perform special duties or assignments as directed by the Police Commissioner in his discretion.

Duties of Police Trainee: Following orientation and training at the Police Academy, performs, under direct supervision, routine non-law enforcement tasks in Police Headquarters or field units; performs related work.

Examples of Typical Tasks (Police Trainee): [illegible] in the preparation of records, documents, correspondence, reports, filing, typing, etc., assists precinct detectives in a clerical capacity; assists members of specialized units in their clerical tasks; operates switchboards.

Tests: Written, weight 100, 75% required.

The written test will be of the multiple choice type and will be designed to test the candidates' intelligence, initiative, judgment and capacity to learn the work of a police trainee and a patrolman. It may include questions on police situations, reading comprehension, arithmetic reasoning and civic awareness.

Candidates who pass the written test will be required to pass a qualifying physical test. This qualifying physical test may start on November 17, 1969. No second opportunity will be given to candidates who fail the qualifying physical test; or who fail to appear for the qualifying physical test, except those on active military duty.

The physical test will be designed to test the strength, agility, and power of candidates in addition, the physical test for patrolman will include a test for height. Candidates will take the physical tests at their own risk of injury, although every effort will be made to safeguard them. Medical evidence to allow participation in the physical test may be required and the Department of Personnel reserves the right to exclude from the physical test any candidate who upon examination of such evidence is apparently medically unfit. Candidates will be required to achieve a minimum mark of 70% or higher on the physical test in order to qualify. Medical and Physical requirements as posted on the Department of Personnel's Bulletin Board must be met.

Candidates shall be rejected for any deficiency, abnormality or disease that tends to impair health or fitness. Such causes for rejection include but are not limited to defective vision, heart and lung disease, hernia, paralysis and defective hearing. A history of any psychoneurotic disorder may disqualify. Persons must be free from such personal or personal abnormalities or deformities as to speech and appearance as would handicap them in the performance of their duties as a Patrolman.

Candidates who fail to attain the pass mark set for any test, subject or part of the examination shall be deemed to have failed the examination and no further test, subject, or part of the examination shall be rated.

Candidates are warned to make full and complete statements on their application blanks and medical questionnaires. Misrepresentation is ground for disqualification.

9080

17,700 filed

6,826 appeared

4,107 passed

2,713 failed

4 withdrew

10/25/69

Exhibit H to Complaint

EXAM ANNouncement
9081)

[illegible]

This examination is open only to women.

[illegible] Vacancies [illegible] at the end of [illegible] at the end of the second year and [illegible] at the end of the third year in the Police Department. The salary [illegible] through these increments is $10,[illegible] per annum.

Other benefits include an annual uniform allowance, 11 paid holidays annually, generous annual leave, sick leave, membership in a liberal pension system, the Social Security System, a welfare fund and a health insurance plan.

Many appointments will be made during the life of the list.

Applications: *Filing Period* — Preapplication forms issued and received Monday through Friday from 9 a. m. to 5 p. m., except Thursday from 9:[illegible] a. m. to 5:[illegible] p. m., and Saturday from 9 a. m. to 12 noon, from September 3, 1969 through September 22, 1969.

Preapplication forms are obtainable free either by the applicant in person or by his representative at the Application Section of the Department of Personnel at 49 Thomas Street, New York, N. Y. 10013. They will also be mailed on request provided that the request to the above section and address is accompanied by a stamped (6 cents) self-addressed 9½-inch envelope for each application requested. All such mail requests must be received not later than September 16, 1969. A preapplication form submitted by mail must be postmarked no later than the last date for receipt of preapplication forms.

Preapplication forms are also issued in person (but not received) at all branches of the public library systems in the various boroughs in New York City, Mount Vernon, New Rochelle, White Plains and Yonkers.

Regular applications will be issued and accepted for filing in person only at the time and place of the written test.

Date of Test: The written test is expected to be held October 25, 1969. This date is tentative only and may be changed if circumstances so demand.

Promotion Opportunities: Policewomen are eligible for promotion examination to Sergeant. Sergeants are eligible for promotion examination to Lieutenant. Lieutenants are eligible for promotion examination to Captain.

Age Requirements: The Administrative Code [illegible] that only persons shall be appointed Policewoman who shall be on the date of the written test less than 29 years of age; and the Public Officers Law provides that persons shall be at least 21 years of age at the time of appointment.

Candidates must be not less than 19 years of age on the date of the written test.

Exception: All persons who were engaged in military duty, as defined in Section 243 of the Military Law, subsequent to July 1, 1940, may deduct the length of time, not exceeding a total of six years, which they spent in such military duty from their actual age in determining their eligibility (Sub. 10c, Section 243, Military Law).

At the time of investigation, applicants will be required to submit proof of date of birth by transcript of record of the Bureau of Vital Statistics or other satisfactory evidence. Any wilful misstatement may be cause for disqualification.

Minimum Requirements: At the time of appointment: (a) graduation from a four-year senior high school course, or (b) possession of an acceptable high school equivalency diploma or United States Armed Forces Institute G. E. D. certificate (a score of at least 35 on each of the five tests and a total score of at least 225 in the examination for the diploma or certificate); or (c) certification of having passed the above examination with these scores.

At the time of appointment applicants must be United States citizens.

Applicants must be not less than 5 feet 2 inches (bare feet) in height and have approximate normal weight for height. Required vision, 20/30 in each eye separately, without glasses.

At the time of appointment as a Probationary Policewoman, residence in New York City, or in Nassau, Westchester, Suffolk, Orange, Rockland, or Putnam Counties is required. Also, at the time of appointment as a Probationary Policewoman, possession of a valid New York State motor vehicle operator's license is required.

Proof of good character will be an absolute prerequisite to appointment. The following are among the factors which would ordinarily be cause for disqualification: (a) conviction of an offense, the nature of which indicates lack of good moral character or disposition toward violence or disorder; (b) repeated conviction of an offense where such convictions indicate a disrespect for the law; (c) repeated discharge from employment where such discharges indicate poor performance or inability to adjust to discipline; (d) addiction to narcotics or excessive use of alcoholic beverages; (e) discharge from the Armed Forces other than the standard honorable discharge. In accordance with the provisions of the Administrative Code, persons convicted of a felony are not eligible for positions in the uniformed forces of the Police Department. In addition, the rules of the City Civil Service Commission provide that no person convicted of petit larceny, or who has been dishonorably discharged by the Armed Forces shall be examined, certified or appointed as a policewoman.

The Police Commissioner has the right to appoint one out of three on each certification.

The rules of the City Civil Service Commission provide that no name shall be certified more than three times to the same appointing officer for the same or similar position, unless at such officer's request.

Those appointed as Probationary Policewoman must serve a probationary period of one year.

Duties: To perform general police duties in the various branches of the department; to perform all additional functions for the rank prescribed by relevant laws, Rules and Procedures, orders or directives of the Police Department; and to perform special duties or assignments as directed by the Police Commissioner in his discretion.

Test: Written, weight 100, 75% required.

The written test will be of the multiple-choice type and will be designed to test the candidates' intelligence, initiative, judgment and capacity to learn the work of a policewoman. It may include questions on police situations, reading comprehension, arithmetic reasoning and civic awareness.

Candidates who pass the written [illegible] required to pass a qualifying physical test. [illegible] second [illegible] will be given to candidates who fail the qualifying physical test; or who fail to appear for the qualifying physical test, except those on active military duty.

The physical test will be designed to test the height, strength, agility, and power of candidates. Candidates will take the physical tests at their own risk of injury, although every effort will be made to safeguard them. Medical evidence to allow participation in the physical test may be required and the Department of Personnel reserves the right to exclude from the physical test any candidate who upon examination of such evidence is apparently medically unfit. Candidates will be required to achieve a minimum mark of 70% or higher on the physical test in order to qualify. Medical and Physical requirements as posted on the Department of Personnel's Bulletin Board must be met.

Candidates shall be rejected for any deficiency, abnormality or disease that tends to impair health or fitness. Such causes for rejection include but are not limited to defective vison, heart and lung diseases, hernia, paralysis and defective hearing. A history of any psychoneurotic disorder may disqualify. Persons must be free from such physical or personal abnormalities or deformities as to speech and appearance as would handicap them in the performance of their duties as a Policewoman.

Candidates who fail to attain the pass mark set for any test, subject or part of the examination shall be deemed to have failed the examination and no further test, subject or part of the examination shall be rated.

All candidates will be required to pass a qualifying medical test prior to appointment.

Candidates are warned to make full and complete statements on their application blanks and medical forms. Misrepresentation is ground for disqualification.

The pertinent sections of the General Examination Regulations are also to be considered part of this notice.

DEPARTMENT OF PERSONNEL, Solomon [illegible]rman, Personnel Director; George [illegible], Secretary.

a3,9

9081
Policewoman
10/25/69

Exhibit I to Complaint

CITY OF NEW YORK

Commission on Human Rights
on the complaint of

Beraldine L. Acha

Complainant

-against-

City of New York; Mayor Abraham D. Beame
Michael J. Codd, Police Dept. et al ;
Respondent.

Complaint No. 697

I, Beraldine L. Acha,

residing at 666-3 Avenue - c/o Murray A. Gordan, P.C. - my attorney

charge Mayor Abraham D. Beame, Police Dept; Michael Codd, Dept. of Perso & Civil Service Commission, of City of NY

whose address is c/o Corp Counsel 1656 Municipal Bldg, NYC

with an unlawful discriminatory practice relating to Employment

at

on or about May 29, 1973 and continuing into present

by applying discriminatory seniority rules and by terminating my

because of my Race ( ), Color ( ), Creed ( ), National Origi

Physical Handicap ( ), Age ( ), Sex (X), Arrest Record ( ),

Retaliation ( ), Marital Status ( ).

The particulars are:

1. I was appointed as a police officer/female on ______

2. On June 24 1975, I received written notification of my term effective June 30, 1975.

3. On or about October 25, 1969 I took Civil Service examination for the position of police woman. This examination was administered to women. On the same day an identical civil service examination #00 was given for the position of police trainee/patrolman. This examinat was administered to only men.

4. Although the examination numbers were different and the examin were administered in different locations, the examination questions w the same and the examinations were graded in the same fashion. Separ eligibility lists were, nevertheless, established as a result of the examinations.

Exhibit I to Complaint

Veterans were and are permitted to raise their score on the examinati us their ranking for appointment solely because of their veteran's us. This practice had an adverse effect on women and continues to versely affect me as fully set forth below.

6. During the period 1969 to 1973, no permanent appointments were made from the two lists. In 1973 the two titles were merged, and in pproximately January 1973 normal appointments were commenced.

7. However, in the period 1969 to 1973, men were appointed as trainees from the all male list and thus, their seniority dates from a period when no females were or could have been appointed.

8. Although the titles were merged, two separate eligibility lists were maintained. The Police Department determined internally to hire at a ratio of 4 men to 1 woman from the two examination lists regardless of rank on the respective list. Thus, since January of 1973 approximately 1,236 male police officers have been appointed and approximately 513 female police officers have been appointed.

9. Prior to January 1973 there was a "quota" of approximately 51 women in the Police Department, and a "quota" of approximately 90 police women. Prior to 1973 women were not assigned to routine patrol duty but were all assigned to a separate unit for women known as the Police Women's Bureau.

0. During the period since 1960 approximately one examination was given every two years for the position of Police Trainee/Patrolman but only two examinations were open to women: a 1964 examination for the position Policewoman and the aforementioned examination for Policewoman, #9081 given in 1969.

1. I fulfilled the minimum eligibility requirements for the position of Police Officer prior to 1969 and was willing and able to take an examination for such position but no examination was open to me during the period 1964 to 1969. I would have taken such an examination had it been available to me.

2. There are presently approximately 30,374 persons employed by the New York City Police Department. 618 are female police officers. 21,669 are male police officers. There is a total of 724 women employed by the Department.

. As a result of the City's fiscal crisis 5,000 persons are to be laid off from the Police Department. 4,000 have, to date, been notified of the lay-offs. Of the 4,000 approximately 371 are female police officers. ll of these female police officers were hired after January of 1973 from a ist resulting from the 1969 examination, #9081. These women were the irst women to be routinely assigned to patrol duty in the New York olice Department.

. In connection with this layoff, veterans are given additional nearned months of seniority based solely upon their status as veterans. his practice has an adverse effect on women.

. I am among the approximately 371 female police officers due to e terminated in this layoff, based upon my date of appointment.

. My date of appointment and therefore the date from which my

Exhibit I to Complaint

ity accrue [illegible] more recent [illegible] all these dates would have been had
en a man with the same qualifications, skills, and abilities. I have
refore been adversely affected by the aforementioned discriminatory
actices because of sex.

.7. The proposed lay-offs will operate to perpetuate into the present the effects of respondent's past sex discrimination.

Exhibit I to Complaint

I am a woman. I charge that Respondent have discriminated against me in violation of the Administrative Code of the City of New York and that as a result of Respondents' unlawful discriminatory practices I have suffered expense, loss of earnings, humiliation, outrage and mental anguish for which I claim compensatory damages.

I have not commenced any action, civil, criminal or administrative based upon the above allegation other than the following:

....

....

CITY OF NEW YORK)
ss.:
COUNTY OF [illegible])

Beraldine L. Acha
(Signature of Complainant)

Beraldine L. Acha, being duly sworn, deposes and says that she is the Complainant herein; that she has read the foregoing complaint and knows the contents thereof; that the same is true of her own knowledge, except as to the matters therein stated on information and belief, and that as to those matters she believes the same to be true.

Subscribed and sworn to before me

this 25 day of June, 1975

Vivienne White
VIVIENNE WHITE
COMMISSIONER OF DEEDS
CITY OF NEW YORK [illegible]
Certificate filed in New York County
Commission Expires October 1, 1975

Beraldine L. Acha
(Signature of Complainant)

ET-5 5/75 (1 of 2)

/1j

[illegible]

Exhibit I to Complaint

Commission on Human Rights
on the complaint of

rlene Egan

Complainant

-against-

ity of N.Y.; Mayor Abraham D. Beame; Michael
. Codd; Police Dept.; Dept. of Personnel and
ivil Service Commission

Respondents

Complaint No. 6973-EC

Arlene Egan ....

~~ding~~ at ...c/o Murray A. Gordon P.C. 666 Third Avenue-my attorney ....

ge ...above named Respondents ....

e address is ...Corp. Counsel 1656 Municipal Building, New York, N.Y. ....

n unlawful discriminatory practice relating to ...Employment ....

1 Police Plaza ....

r about ...June 25, 1973 and continuing unto present ....

...Applying discriminatory seniority rules and terminating my employment

use of my Race ( ), Color ( ), Creed ( ), National Origin (
ical Handicap ( ), Age ( ), Sex (x), Arrest Record ( ),
Retaliation ( ), Marital Status ( ).

particulars are:

1. I was appointed as a police officer/female on June 25, 1973.

2. On June [illegible]75, I received written notification of my termination, effective June 30, 1975.

3. On or about October 25, 1969, I took civil service examination #9081 for the position of police-woman. This examination was administered only to women. On the same day an identical civil service examination #9080 was given for the position of police-trainee, patrolman. This examination was administered only to m

Exhibit I to Complaint

4. Although the examination numbers were different and the examinations were administered in different locations, the examination questions were the same and the examinations were graded in the same fashion. Separate eligibility lists were, nevertheless, established as a result of the two examinations.

5. Veterans were and are permitted to raise their score on the examination and thus their ranking for appointment, solely becau of their veterans status. This practice had an adverse affect on women and continues to adversely affect me as fully set forth below.

6. During the period 1969 to 1973 no permanent appointments were made from the two lists. In 1973 the two titles were merged, and in approximately January 1973 normal appointments were comm

7. However, in the period 1969 to 1973, men were appointed as trainees from the all male list and thus, their seniority dates from a period when no females were or could have been appointed.

8. Although the titles were merged, two separate eligibility lists were maintained. The Police Department determined internally to hire at a ratio of 4 men to 1 woman from the two examination lists, regardless of rank on the respective list. Thus, since January of 1973 approximately 4,236 male police officers have been appointed and approximately 513 female police officers hav been appointed.

9. Prior to January 1973 there was a "quota" of approximately 354 women in the Police Department, and a "quota" of approximately 290 police women. Prior to 1973 women were not assigned to routine patrol duty but were all assigned to a separate unit for women known as the Police Women's Bureau.

10. During the period since 1960 approximately one examination was given every two years for the position of Police Trainee/Patro man but only two examinations were open to women: 1964 examination for the position Policewoman and the aforementioned examination for Policewoman, #9081 given in 1969.

11. I fulfilled the minimum eligibility requirements for the posit of Police Officer prior to 1969 and was willing and able to take an examination for such position but no examination was open to me during the period of 1964 to 1969. I would have tal such an examination had it been available to me.

#6973-EG June 25, 1975

Exhibit I to Complaint

12. There are presently approximately 30,374 persons employed by the New York City Police Department. 618 are female police officers. 21,669 are male police officers. There is a total of 724 women employed by the Department.

13. As a result of the City's fiscal crisis, 5,000 persons are to be laid off from the Police Department. 4,000 have, to date, been notified of the lay-offs. Of the 4,000 approximately 371 are female police officers. All of these female police officers were hired after January of 1973 from a list resulting from the 1969 examination, #9081. These women were the first women to be routinely assigned to patrol duty in the New York Police Department.

14. In connection with this lay-off, veterans are given additional unearned months of seniority based solely upon their status as veterans. This practice has an adverse effect on women.

15. I am among the approximately 371 female police officers due to be terminated in this lay-off, based upon my date of appointment.

16. My date of appointment and therefore the date from which my seniority accrues is more recent than those dates would have been had I been a man with the same qualifications, skills, and abilities. I have therefore been adversely affected by the aforementioned discriminatory practices because of sex.

17. The proposed lay-offs will operate to perpetuate into the present the effects of respondent's past sex discrimination.

Exhibit I to Complaint

I am a woman. I charge that Respondent have discriminated against me in violation of the Administrative Code of the Cit of New York and that as a result of Respondents' unlawful discriminatory practices I have suffered expense, loss of earnings, humiliation, outrag and mental anguish for which I claim compensatory damages.

I have not commenced any action, civil, criminal or administrative based upon the above allegation other than the following:

....

....

CITY OF NEW YORK)
ss.:
COUNTY OF NEW YORK)

....
(Signature of Complainan

Arlene Egan, being duly sworn, deposes and that she is the Complainant herein; that she has read the foregoing complaint and knows the contents thereof; that the same is tru of her own knowledge, except as to the matters therein stated on infor and belief, and that as to those matters she believes the same to true.

Subscribed and sworn to before me

this 25 day of June, 1975

VIVIENNE WHITE
COMMISSIONER OF DEEDS
CITY OF NEW YORK [illegible]
Certificate filed in New York County
Commission Expires October 1, 1975

....
(Signature of Complainan

ET-5 5/75 (2 of 2)
lf

Exhibit J to Complaint

(PLEASE PRINT OR TYPE)

CHARGE OF DISCRIMINATION

EEOC CHARGE NO.

FORM APPROVED OMB NO. 124-R0001

INSTRUCTIONS

If you have a complaint, fill in this form and mail it to the Equal Employment Opportunity Commission's District Office in your area. In most cases, a charge must be filed with the EEOC within [illegible] after the discriminatory act took place. IT IS THEREFORE IMPORTANT TO FILE YOUR CHARGE AS SOON AS POSSIBLE. (Attach extra sheets of paper if necessary.)

CAUSE OF DISCRIMINATION

☐ RACE OR COLOR ☒ SEX
☐ RELIGIOUS CREED
☐ NATIONAL ORIGIN

NAME (Indicate Mr. or Ms.): Ms. Beraldine L. Acha
DATE OF BIRTH: December 18, 1941
STREET ADDRESS: c/o Murray A.Gordon, P. C.
666 Third Avenue
COUNTY: New York
SOCIAL SECURITY NO.: 072-32-7273
CITY, STATE, AND ZIP CODE: New York, New York 10017
TELEPHONE NO. (Include area code): 212/661-7900

THE FOLLOWING PERSON ALWAYS KNOWS WHERE TO CONTACT ME

NAME (Indicate Mr. or Ms.): Murray A. Gordon, P. C.
TELEPHONE NO. (Include area code): 212-661-7900
STREET ADDRESS: 666 Third Avenue
CITY, STATE, AND ZIP CODE: New York, New York 10017

LIST THE EMPLOYER, LABOR ORGANIZATION, EMPLOYMENT AGENCY, APPRENTICESHIP COMMITTEE, STATE OR LOCAL GOVERNMENT WHO DISCRIMINATED AGAINST YOU (If more than one, list all)

NAME: City of New York
TELEPHONE NO. (Include area code):
STREET ADDRESS: Corporation Counsel
1656 Municipal Building
CITY, STATE, AND ZIP CODE: New York City, New York

OTHERS WHO DISCRIMINATED AGAINST YOU (If any): .Police Dept. Michael J. Codd, Comm., Dept. of Personnel and
Abraham D.Beame, Civil Service Commission

CHARGE FILED WITH STATE/LOCAL GOV'T. AGENCY: ☒ YES ☐ NO
DATE FILED: 6/25/75
AGENCY CHARGE FILED WITH (Name and address): N.Y. C. Human Rights Commission

APPROXIMATE NO. OF EMPLOYEES/MEMBERS OF COMPANY OR UNION THIS CHARGE IS FILED AGAINST: 30,000
DATE MOST RECENT OR CONTINUING DISCRIMINATION TOOK PLACE (Month, day, and year): 6/24/75

Explain what unfair thing was done to you and how other persons were treated differently. Understanding that this statement is for the use of the United States Equal Employment Opportunity Commission, I hereby certify:

See Attached Sheet

6/25/75

I swear or affirm that I have read the above charge and that it is true to the best of my knowledge, information and belief.

DATE: 6/25/75
CHARGING PARTY (Signature): Beraldine L. Acha

Subscribed and sworn to before this EEOC representative.

DATE:
SIGNATURE AND TITLE:

NOTARY PUBLIC

SUBSCRIBED AND SWORN TO BEFORE ME THIS DATE (Day, month, and year):

WANINA ANGEL
Notary Public, State of New York
No. 31-4509617
Qualified in New York County
Commission Expires March 30, 1977

SIGNATURE (If it is difficult for you to get a Notary Public to sign this, sign your own name and mail to the District Office. The Commission will notarize the charge for you at a later date.)

Previous editions of this form may be used.

U.S. GOVERNMENT PRINTING OFFICE : 1973-728-451/1250 3-1
GPO 871-188

Exhibit J to Complaint

1. I was appointed as a police officer/female on May 29, 1973.

2. On June 24, 1975, I received written notification of my termination, effective June 30, 1975.

3. On or about October 25, 1969, I took civil service examination #9081 for the position of police-woman. This examination was administered only to women. On the same day an identical civil service examination #9080 was given for the position of police-trainee, patrolman. This examination was administered only to men.

4. Although the examination numbers were different and the examinations were administered in different locations, the examination questions were the same and the examinations were graded in the same fashion. Separate eligibility lists were, nevertheless, established as a result of the two examinations.

5. Veterans were and are permitted to raise their score on the examination and thus their ranking for appointment, solely because of their veterans status. This practice had an adverse affect on women and continues to adversely affect me as fully set forth below.

6. During the period 1969 to 1973 no permanent appointments were made from the two lists. In 1973 the two titles were merged, and in approximately January 1973 normal appointments were commenced.

7. However, in the period 1969 to 1973, men were appointed as trainees from the all male list and thus, their seniority dates from a period when no females were or could have been appointed.

8. Although the titles were merged, two separate eligibility lists were maintained. The Police Department determined internally to hire at a ratio of 4 men to 1 woman from the two examination lists, regardless of rank on the respective

[illegible] ANGEL [illegible] York
[illegible]
[illegible] County
[illegible] New York County
Commission Expires March 30, 1977

6/25/75

Exhibit J to Complaint

list. Thus, since January of 1973 approximately 4,236 male officers have been appointed and approximately 513 female police officers have been appointed.

9. Prior to January 1973 there was a "quota"of approximately 354 women in the Police Department, and a "quota" of approximately 290 police women. Prior to 1973 women were not assigned to routine patrol duty but were all assigned to a separate unit for women known as the Police Women's Bureau.

10. During the period since 1960 approximately one examination was given every two years for the position of Police Trainee/Patrolman but only two examinations were open to women: 1964 examination for the position Policewoman and the aforementioned examination for Policewoman, #9081 given in 1969.

11. I fulfilled the minimum eligibility requirements for the position of Police Officer prior to 1969 and was willing and able to take an examination for such position but no examination was open to me during the period of 1964 to 1969. I would have taken such an examination had it been available to me.

12. There are presently approximately 30,374 persons employed by the New York City Police Department. 618 are female police officers. 21,669 are male police officers. There is a total of 724 women employed by the Department.

13. As a result of the City's fiscal crisis, 5,000 persons are to be laid off from the Police Department. 4,000 have, to date, been notified of the lay-offs. Of the 4,000 approximately 371 are female police officers. All of these female police officers were hired after January of 1973 from a list resulting from the 1969 examination, #9081. These women were the first women to be routinely assigned to patrol duty in the New York Police Department.

14. In connection with this lay-off, veterans are given additional unearned months of seniority based solely upon their status as veterans. This practice has an adverse effect on women.

[illegible] York
[illegible] County
[illegible] York County
Commission Expires March 30, 1977

6/25/75

Exhibit J to Complaint

15. I am among the approximately 371 female police officers due to be terminated in this lay-off, based upon my date of appointment.

16. My date of appointment and therefore the date from which my seniority accrues is more recent than those dates would have been had I been a man with the same qualifications, skills, and abilities. I have therefore been adversely, affected by the aforementioned discriminatory practices because of sex.

17. The proposed lay-offs will operate to perpetuate into the present the effects of respondent's past sex discrimination.

[illegible] ANGEL
Notary [illegible] New York
[illegible] 31-1500617
Qualified [illegible] York County
Cert[illegible] New York County
Commission Expires March 30, 1977

Sworn to before me this
25 day of June, 1975

Exhibit J to Complaint

CHARGE OF DISCRIMINATION

EEOC CHARGE NO.

FORM APPROVED
OMB NO. 124-R0001

INSTRUCTIONS

If you have a complaint, fill in this form and mail it to the Equal Employment Opportunity Commission's District Office in your area. In most cases, a charge must be filed with the EEOC within a specified time after the discriminatory act took place. IT IS THEREFORE IMPORTANT TO FILE YOUR CHARGE AS SOON AS POSSIBLE. *(Attach extra sheets of paper if necessary.)*

CAUSE OF DISCRIMINATION

☐ RACE OR COLOR ☒ SEX
☐ RELIGIOUS CREED
☐ NATIONAL ORIGIN

NAME *(Indicate Mr. or Ms.)* Ms. Arlene Egan	DATE OF BIRTH June 15, 1941
STREET ADDRESS c/o Murray A. Gordon, P. C. 666 Third Avenue — COUNTY New York	SOCIAL SECURITY NO. 151-32-2561
CITY, STATE, AND ZIP CODE New York, New York 10017	TELEPHONE NO. *(Include area code)* 212-661-7900

THE FOLLOWING PERSON ALWAYS KNOWS WHERE TO CONTACT ME

NAME *(Indicate Mr. or Ms.)* Murray A. Gordon, P. C.	TELEPHONE NO. *(Include area code)* 212-661-7900
STREET ADDRESS 666 Third Avenue	CITY, STATE, AND ZIP CODE New York, New York 10017

LIST THE EMPLOYER, LABOR ORGANIZATION, EMPLOYMENT AGENCY, APPRENTICESHIP COMMITTEE, STATE OR LOCAL GOVERNMENT WHO DISCRIMINATED AGAINST YOU *(If more than one, list all)*

NAME City of New York	TELEPHONE NO. *(Include area code)*
STREET ADDRESS Corporation Counsel, 1657 Municipal Bldg.	CITY, STATE, AND ZIP CODE New York City

OTHERS WHO DISCRIMINATED AGAINST YOU *(If any)*	Abraham D. Beame, Michael J. Codd, Dept. Personnel Civil Service Commission

CHARGE FILED WITH STATE/LOCAL GOV'T. AGENCY ☒ YES ☐ NO	DATE FILED 6/25/75	AGENCY CHARGE FILED WITH *(Name and address)* N.Y.C. Human Rights Commission

APPROXIMATE NO. OF EMPLOYEES/MEMBERS OF COMPANY OR UNION THIS CHARGE IS FILED AGAINST 30,000	DATE MOST RECENT OR CONTINUING DISCRIMINATION TOOK PLACE *(Month, day, and year)* 6/20/75

Explain what unfair thing was done to you and how other persons were treated differently. Understanding that this statement is for the use of the United States Equal Employment Opportunity Commission, I hereby certify:

See Attached Sheet

I swear or affirm that I have read the above charge and that it is true to the best of my knowledge, information and belief.

DATE 6/25/75

CHARGING PARTY *(Signature)*

Subscribed and sworn to before this EEOC representative.

DATE

SIGNATURE AND TITLE

NOTARY PUBLIC

SUBSCRIBED AND SWORN TO BEFORE ME THIS DATE *(Day, month, and year)* 6/25/75

MARION WENGEL
Notary Public, State of New York
No. 31-1509617
Qualified in New York County
Cert. Filed in New York County
Commission Expires March 30, 1977

SIGNATURE *(If it is difficult for you to get a Notary Public to sign this, sign your own name and mail to the District Office. The Commission will notarize the charge for you at a later date.)*

Exhibit J to Complaint

1. I was appointed as a police officer/female on June 25, 1973.

2. On June 20, 1975, I received written notification of my termination, effective June 30, 1975.

3. On or about October 25, 1969, I took civil service examination #9081 for the position of police-woman. This examination was administered only to women. On the same day an identical civil service examination #9080 was given for the position of police-trainee, patrolman. This examination was administered only to men.

4. Although the examination numbers were different and the examinations were administered in different locations, the examination questions were the same and the examinations were graded in the same fashion. Separate eligibility lists were, nevertheless, established as a result of the two examinations.

5. Veterans were and are permitted to raise their score on the examination and thus their ranking for appointment, solely because of their veterans status. This practice had an adverse affect on women and continues to adversely affect me as fully set forth below.

6. During the period 1969 to 1973 no permanent appointments were made from the two lists. In 1973 the two titles were merged, and in approximately January 1973 normal appointments were commenced.

7. However, in the period 1969 to 1973, men were appointed as trainees from the all male list and thus, their seniority dates from a period when no females were or could have been appointed.

8. Although the titles were merged, two separate eligibility lists were maintained. The Police Department determined internally to hire at a ratio of 4 men to 1 woman from the two examination lists, regardless of rank on the respective

6/25/

MARINA ANGEL
Notary Public S [illegible] New York
No. 31-1509617
Qualified in New York County
Cert. Filed in New York County
Commission Expires March 30, 197 7

Exhibit J to Complaint

list. Thus, since January of 1973 approximately 4,236 male officers have been appointed and approximately 513 female police officers have been appointed.

9. Prior to January 1973 there was a "quota"of approximately 354 women in the Police Department, and a "quota" of approximately 290 police women. Prior to 1973 women were not assigned to routine patrol duty but were all assigned to a separate unit for women known as the Police Women's Bureau.

10. During the period since 1960 approximately one examination was given every two years for the position of Police Trainee/Patrolman but only two examinations were open to women: 1964 examination for the position Policewoman and the aforementioned examination for Policewoman, #9081 given in 1969.

11. I fulfilled the minimum eligibility requirements for the position of Police Officer prior to 1969 and was willing and able to take an examination for such position but no examination was open to me during the period of 1964 to 1969. I would have taken such an examination had it been available to me.

12. There are presently approximately 30,374 persons employed by the New York City Police Department. 618 are female police officers. 21,669 are male police officers. There is a total of 724 women employed by the Department.

13. As a result of the City's fiscal crisis, 5,000 persons are to be laid off from the Police Department. 4,000 have, to date, been notified of the lay-offs. Of the 4,000 approximately 371 are female police officers. All of these female police officers were hired after January of 1973 from a list resulting from the 1969 examination, #9081. These women were the first women to be routinely assigned to patrol duty in the New York Police Department.

14. In connection with this lay-off, veterans are given additional unearned months of seniority based solely upon their status as veterans. This practice has an adverse effect on women.

11/25/75

MARINA ANGEL
Notary Public, State of New York
No. 31-1509617
Qualified in New York County
Cert. filed in New York County
Commission Expires March 30, 1977

Exhibit J to Complaint

15. I am among the approximately 371 female police officers due to be terminated in this lay-off, based upon my date of appointment.

16. My date of appointment and therefore the date from which my seniority accrues is more recent than those dates would have been had I been a man with the same qualifications, skills, and abilities. I have therefore been adversely, affected by the aforementioned discriminatory practices because of sex.

17. The proposed lay-offs will operate to perpetuate into the present the effects of respondent's past sex discrimination.

[illegible] ANGEL
[illegible] State of New York
No. 31-[illegible]17
Qualified in New York County
Cert. Filed in New York County
Commission Expires March 30, 197

Sworn to before me this 25
, day of June, 1975

Order to Show Cause and Supporting Affidavits

Order to Show Cause

UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT

---X

BERALDINE L. ACHA and ARLENE M. EGAN, each individually and on behalf of all others similarly situated,

Plaintiffs,

-against-

ABRAHAM D. BEAME, individually and in his capacity as Mayor of the City of New York, MICHAEL J. CODD, individually and in his capacity as Police Commissioner of the New York City Police Department and THE CITY OF NEW YORK, as a public employer,

Defendants.

---X

ORDER TO SHOW CAUSE

CLASS ACTION

75 Civ. 3128

UPON the summons and complaint herein, the exhibits attached thereto and the affidavits of BERALDINE L. ACHA, ARLENE M. EGAN and GERTRUDE SCHIMMEL, all sworn to the 25th day of June, 1975, and sufficient cause appearing therefor, it is

ORDERED, that the defendants show cause before the United States District Judge KEVIN T. DUFFY, at Room 1506 of the United States Courthouse for the Southern District of New York, on the 3rd day of J[illegible] 1975, at 2 o'clock P. M. why an order should not be made herein:

A. Temporary restraining order pursuant to Rule 65 and a granting a preliminary injunction, pending the hearing and determination of this action, restraining, prohibiting and stopping the defendants, and their servants, agents and employees from continuing with the policies and practices of the defendants set forth in the complaint herein which violate the Due Process and Equal Protection Clauses of the Fourteenth Amendment to the United States Constitution and 42 U.S.C. §1983 and 42 U.S.C. §2000e-2;

B. granting a declaratory judgment declaring that the policies and practices of the defendants set forth in the complaint herein violate the Due Process and Equal Protection Clauses of the Fourteenth Amendment to the United States Constitution and 42 U.S.C. §1983 and 42 U.S.C. §2000e-2;

C. - allowing plaintiffs their costs and disbursements herein as well as reasonable attorneys fees.

ORDERED, that no bond or other surety need be posted by plaintiffs;

SUFFICIENT CAUSE APPEARING THEREFOR, LET service of this order on defendants or their attorneys on or before o'clock on the day of June 1975, be deemed good and sufficient.

Dated: New York, New York
June 25. 1975

U.S.D.J.

Affidavit of Beraldine Acha

Affidavit of Beraldine L. Acha

UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT
------------------------------------X
BERALDINE L. ACHA et al.,

Plaintiffs,

-against-

ABRAHAM D. BEAME, et al.,

Defendants.
------------------------------------X

AFFIDAVIT
CLASS ACTION
75 CIV.

STATE OF NEW YORK)
) SS:-
COUNTY OF NEW YORK)

BERALDINE L. ACHA, being duly sworn, deposes and says:

1. I am one of the plaintiffs in the above entitled action, and I submit this affidavit in support of plaintiffs motion herein for an order temporarily restraining defendants from terminating the employment of plaintiffs and all others similarly situated.

2. I am a resident of the City and State of New York, and am presently employed as a Police Officer in the New York City Police Department, pursuant to a permanent appointment in that capacity in the classified civil service of the City of New York on May 29, 1973.

3. I am presently married and earn the same amount of money as my husband, approximately $13,000 a year. I provide the sole support of my 9 year old son by a previous marriage, of whom I have custody.

Affidavit of Beraldine L. Acha

4. I received notice on June 24, 1975 that my employment with the New York City Police Department will be terminated on June 30, 1975.

5. Although I desired to take an examination for employment by the New York City Police Department after 1964 and prior to 1969 there was no examination which I could take during the period of time.

6. In 1969 two examinations were given, No. 9080 for the title Police-Trainee/Patrolman and No. 9081 for the title Policewoman. I took examination No. 9081.

7. Although two separate examinations were announced and administered separately the examination questions were the same and the examinations were graded in the same fashion. Separate eligibility lists were nevertheless, established as a result of the two examinations.

8. There was a job freeze on hiring by the New York City Police Department in effect from approximately 1970 to 1973. When the job freeze was lifted in January 1973, I was appointed to the force on May 29, 1973.

9. On January 1973 the titles of Patrolman and Policewoman were merged into the title of Police Officer. Men and women appointed to the Department subsequent to 1973 underwent the same medical examination and received the same training at the Police Academy.

10. I have not served in the Armed Services of this country and am not eligible for veterans credits.

11. The termination of my employment on June 30, 1975 would result in the loss of half of our family income and would disable me from supporting my 9 year old son. It would further result in my suffering discrimination on the basis of sex.

12. Upon information and belief there are currently approximately 30,374 active, uniformed members of the New York City Police Department, of which approximately 21,669 are male Police Officers and 618 are female Police Officers. Of the approximately 513 female Police Officers appointed from January of 1973 there are less than 450 who have remained on the Force.

[illegible] New York
Notary Public [illegible]
No. 31-[illegible]17
Qualified in [illegible] County
Cert. Filed in [illegible] County
Commission Expires March 30, 1977

Sworn to before me this
25 day of June, 1975.

Beraldine L. Acha
BERALDINE L. ACHA

Affidavit of Arlene Egan

Affidavit of Arlene M.

UNITED STATES DISTRICT COURT

FOR THE SOUTHERN DISTRICT

---X

BERALDINE L. ACHA, et al.,

Plaintiffs,

-against-

ABRAHAM D. BEAME, et al.,

Defendants.

---X

AFFIDAVIT

CLASS ACTION

75 Civ.

STATE OF NEW YORK)
) SS:-
COUNTY OF NEW YORK)

ARLENE M. EGAN, being duly sworn, deposes and says:

1. I am one of the plaintiffs in the above entitled action, and I submit this affidavit in support of plaintiffs' motion herein for an order temporarily restraining defendants from terminating the employment of plaintiffs and all others similarly situated.

2. I am a resident of the City and State of New York, and am presently employed as a Police Officer in the New York City Police Department, pursuant to a permanent appointment in that capacity in the classified civil service of the City of New York.

3. I am divorced and have custory of my 14 year old son whom I support. My salary is my sole source of income.

4. I received notice on June 20, 1975 that my employment with the New York City Police Department will be terminated on June 30, 1975.

Affidavit of Arlene M. Egan

5. Although I desired to take an examination for employment by the New York City Police Department after 1964 and prior to 1969 there was no examination which I could take during that period of time.

6. In 1969 two examinations were given, No. 9080 for the title Police Trainee/Patrolman and No. 9081 for the title Policewoman. I took examination No. 9081.

7. Although two separate examinations were announced and administered separately the examination questions were the same and the examinations were graded in the same fashion. Separate eligibility lists were nevertheless, established as a result of the two examinations.

8. There was a job freeze on hiring by the New York City Police Department in effect from approximately 1970 to 1973. When the job freeze was lifted in January 1973, I was appointed to the force on June 25, 1973.

9. On January 1973 the titles of Patrolman and Policewoman were merged into the title of Police Officer. Men and women appointed to the Department subsequent to 1973 underwent the same medical examination and received the same training at the Police Academy.

10. I have not served in the Armed Services of this country and am not eligible for veterans credit.

11. The termination of my employment would result in the loss of the sole source of my income and would destroy

my ability to support myself and my 14 year old son. It would furthermore subject me to discrimination on the basis of sex.

12. Upon information and belief there are currently approximately 30,374 active, uniformed members of the New York City Police Department, of which approximately 21,669 are male Police Officers and 618 are female Police Officers. Of the approximately 513 female Police Officers appointed from January of 1973 there are less than 450 who have remained on the Force.

MARINA ANGEL
Notary Public, State of New York
No. 31-4509617
Qualified in New York County
Cert. Filed in New York County
Commission Expires March 30, 1977

Arlene M. Egan
ARLENE M. EGAN.

Sworn to before me this

25 day of June, 1975.

Affidavit of Gertrude Schimmel

Affidavit of Gertrude Schimmel

UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT
-----------------------------------X
BERALDINE L. ACHA and ARLENE N.
EGAN, et al.,

Plaintiffs,

-against-

ABRAHAM D. BEAME, et al.,

Defendants.
-----------------------------------X

AFFIDAVIT

CLASS ACTION

75 Civ.

STATE OF NEW YORK)
) SS:-
COUNTY OF NEW YORK)

GERTRUDE SCHIMMEL, being duly sworn, deposes and says:

1. I have been employed by the New York City Police Department since 1940 and am currently an Inspector and Commanding Officer of the New York City Police Department Public Information Division.

2. Upon information and belief commencing on or about May 21, 1975, plaintiffs and members of their class were notified that their services with the New York City Police Department are to be terminated on June 30, 1975.

3. Upon information and belief the defendants plan to terminate the services of approximately 5,000 police officers. As of June 24, 1975, 4,000 notices had been given; approximately 371 to female Police Officers. When the final 1,000 notices are given, it is expected that the employment of approximately all the female Police Officers appointed since

February of 1973 will be terminated.

4. Upon information and belief, there are currently approximately 30,000 active, uniformed members of the New York City Police Department, of which approximately 22,120 are serving in the rank and title of Police Officer. There are approximately 21,500 male Police Officers and approximately 620 female Police Officers. There are approximately 724 women in toto currently employed in the uniformed force of the New York City Police Department.

5. Upon information and belief, prior to January 1973 there was a quota limited to approximately 354 women in the uniformed ranks of the New York City Police Department, with a quota of 290 women in the rank and title of Policewoman.

6. Upon information and belief, prior to January 1973, women entering the ranks of the uniformed force of the New York City Police Department served in the title of Policewoman and men in the title of Patrolman. It was only in 1973 that the two titles were merged into the title of Police Officer.

7. Upon information and belief, prior to 1973, the vast majority of women appointed to the uniformed force of the Police Department were initially assigned to the Bureau of Policewomen, whereas men were assigned to various precincts throughout the City.

8. Upon information and belief, prior to 1969 different examinations were given for the titles Policewoman and Patrolman. Examinations for the title of Policewoman were given in 1964 and [illegible]. During the same period, a greater number of examinations were given for the title Patrolman.

9. Upon information and belief, in 1969 two examinations were given, No. 9080 for the title Police Trainee/ Patrolman, and No. 9081 for the title Policewoman. Although two separate examinations were announced and the examinations were administered separately, the examination questions were the same and the examinations were graded in the same fashion. Separate eligibility lists were established as a result of the two examinations.

10. Upon information and belief, there was a job freeze on hiring by the New York City Police Department in effect from approximately 1970 to January 1973. When the job freeze was lifted in January of 1973, it was determined by the then Police Commissioner Patrick V. Murphy that men and women should be appointed from existing lists at a ratio of four men to one woman.

11. Upon information and belief, all of the women appointed to the New York City Police Department subsequent to January 1973 were appointed from a list established as a result of examination No. 9081; men were appointed from five different lists, one of which was examination no. 9080.

12. Upon information and belief, since January 1973 approximately 4,000 male Police Officers have been appointed and approximately 500 female Police Officers have been appointed, but these numbers of Police Officers in the Department have since been reduced by terminations and resignations.

Affidavit of Gertrude Schimmel

13. Upon information and belief, men and women appointed to the Department since 1973 had received the same training and have been assigned to the same duties and responsibilities including uniform patrol duty.

GERTRUDE SCHIMMEL

Sworn to before me this

25 day of June, 1975..

JEFFREY [illegible]
NOTARY PUBLIC, State of New York
No. [illegible]
Qualified in New York County
Commission Expires March 30, 1976

Affidavit of Marina Angel

Affidavit of Marina Angel

UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF NEW YORK
--------------------------------------X
BERALDINE I. ACHA, et al.,

Plaintiffs

-against-

ABRAHAM D. BEAME, et al.,

Defendants.
--------------------------------------X

AFFIDAVIT

CLASS ACTION
75 CIV.

STATE OF NEW YORK)
)SS:-
COUNTY OF NEW YORK)

MARINA ANGEL, being duly sworn, deposes and says:

1. I am associated with the firm of Murray A. Gordon, P.C., attorneys for plaintiffs herein. I submit this affidavit in support of plaintiffs' application for the issuance of a temporary restraining order and a preliminary injunction enjoining and restraining defendants from terminating the employment of plaintiffs and members of their class as female Police Officers employed by the New York City Police Department (hereinafter "Police Department").

2. If a temporary restraining order and preliminary injunction is not granted, plaintiffs and members of their class will suffer irreparable damage. Such termination of employment would be in violation of the Due Process and Equal Protection Clauses of the Constitution of the United States and 42 U.S.C.§§1983 and 2000e-2,,since such terminations would result in

discrimination on the basis of sex. Furthermore the loss of employment to plaintiffs and members of their class is of major concern. One plaintiff contributes approximately half of the family income and the other plaintiff is the sole support of herself and the primary support of her minor child. In this respect the named plaintiffs are representative of the class.

3. Should the Court fail to grant the remedy requested, plaintiffs and members of their class will have suffered from discrimination on the basis of sex and will have suffered furthermore severe monetary loss which will result in an inability to support themselves and their families.

4 With respect to the requirement that plaintiff show a reasonable probability of success, in the final outcome of this litigation, I believe that the facts sworn to in the affidavits of plaintiffs demonstrate beyond cavil that they shall succeed. Our accompanying memorandum of law demonstrates that the overwhelming weight of the law is on their side.

5. Plaintiffs respectfully request that this Court waive the requirement that they post security. Plaintiffs are persons of modest income and do not have sufficient assets to be able to purchase a bond of any significant amount.

6. This motion is brought on by order to show cause rather than by notice of motion because defendants have not yet appeared and because the need for prompt injunctive relief to prevent irreparable damage to plaintiffs. On information and belief, the following charts represent the situation which has

Affidavit of Marina Angel

existed in the New York City Police Department and which will exist as of July, 1975 if the proposed lay-offs occur:

CHART #1

COMPOSITION OF POLICE DEPARTMENT AS OF DECEMBER 28, 1972

# of Female Police Officers	Approximate Size of Uniformed Face	% of FRO
223 (active)	29,532 (active)	00.75%(active
290 (quota)	30,816 (quota)	00.94%(quota)

CHART #2

COMPOSITION OF POLICE DEPARTMENT AS OF JUNE 12, 1975

618 (active)	30,374(active)	2.03%(active)
quota unknown	35,219(quota)	

CHART #3

COMPOSITION OF POLICE DEPARTMENT AS OF JULY 1, 1975

Total Unif. Force	# of Female Police Officers	# of Male Police Officers	% Female Police Offi
26,374	347	18,040	1.32%

CHART #4

APPOINTMENTS TO POLICE OFFICER: JANUARY 1973 TO DATE

# of Male Police Officers	# of Female Police Officers	Total	% Female Police Officers
4,246	513	4,759	10.78%

CHART #5

PERCENTILE REDUCTION IN POLICE OFFICERS TOTAL BY SEX

Female Police Officers Term.	Female Police Officers As of June 1975	% of Female Police Officers Term.
371	618	60.03%

Male Police Officers Term.	Male Police Officers As of June 1975	% of Male Police Officers Term.
3.629	21,669	16.75%

Affidavit of Marina Angel

7. On June 25, 1975, at 2:55 P.M. I telephoned the Office of the Corporation Counsel of the City of New York and informed Mr. Leonard Bernikow, Assistant Corporation Counsel in Charge of General Litigation, that an application for a temporary restraining order would be made at about 1:30 P.M. on June 26, 1975 at the Office of the Clerk, Room 602, Foley Square, Federal Court Building, New York City, New York.

8. No prior application has been made for the relief sought in this application.

Marina Angel

MARINA AN[illegible]

Sworn to before me this

26th day of June, 1975.

Catherine Stringer

CATHERINE STRINGER
Notary Public, State of New York
No. 41-1062850
Qualified in Queens County
Commission Expires March 30, 1977

Affidavit of Ronald H. Shechtman

Affidavit of Ronald H. Shechtman

UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT

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BERALDINE L. ACHA and ARLENE M. EGAN, each individually and on behalf of all other similarly situated, Plaintiffs,	**AFFIDAVIT**
against	75 Civ. 3128
ABRAHAM D. BEAME, individually and in his capacity as Mayor of the City of New York, MICHAEL J. CODD, individually and in his capacity as Police Commissioner of the New York City Police Department and THE CITY OF NEW YORK, as a public employer, Defendants.	

--------------------------------------x

STATE OF NEW YORK)
) SS.:
COUNTY OF NEW YORK)

RONALD H. SHECHTMAN, being duly sworn, deposes and says:

1. I am associated with the firm of MURRAY A. GORDON, P.C., attorneys for plaintiffs in the above entitled action. This affidavit is submitted in support of plaintiffs' application for a temporary restraining order and preliminary injunction herein.

2. Annexed hereto as Exhibit "A" is a copy of the Sworn Personnel Data Report of the New York City Police Department dated June 12, 1975. Annexed hereto as Exhibits "B" and "C" respectively are copies of the same Personnel reports, dated February 1, 1973 and December 28, 1972.

3. Set forth below are revised charts, which set forth the same data as hereinbefore submitted in the affidavit of Marina Angel, Esq. The revisions below, however, include female officers assigned as detectives, since their rank and title remain that of Police Officers. The foregoing data is limited to the composition of the uniformed force in the rank and title of Police Officer, as that rank and title are the required entry level

to the uniformed force of the Police Department:

CHART #1

COMPOSITION OF RANK POLICE OFFICER (12/28/72)

# of Females	Total	% Females
282(active)	25,210(active)	1.12%
355(quota)	26,414(quota)	1.34%

CHART #2

COMPOSITION OF RANK POLICE OFFICER (6/12/75)

680(active) quota unknown	25,936(active)	2.62%

CHART #3

COMPOSITION OF RANK POLICE OFFICER (7/1/75)

309(active)	21,936(active)	1.41%

CHART #4

APPOINTMENTS TO POLICE OFFICER: JANUARY 1973 TO DATE

# of Male Police Officers	# of Female Police Officers	Total	% Female Police Officers
4,246	513	4,759	10.78%

CHART #5

% REDUCTION IN POLICE OFFICERS BY SEX

Female Police Officers Term.	Female Police Officers as of June, 1975	Percentage
371	680	54.6%

Male Police Officers Term.	Male Police Officers as of June 1975	Percentage
3,629	25,256	14.4%

4. It must be here noted that the data set forth above are not based on mere allegations of plaintiffs or upon information and belief, but are rather derived from sworn personnel statements of Officers of the New York City Police Department. Those statements, we believe, are used for budgetary purposes, as well as for the purpose of determining open positions

for appointments and promotions to and in the uniformed force.

5. Those data reflect on their face a clear and unequivocal discriminatory impact on female Police Officers, resultant from the proposed lay-offs by defendants herein. As more fully set forth in the prior affidavits herein submitted, appointments, assignments and employment opportunities in the New York City Police Department have been historically limited for female applicants and members, and the effect of these lay-offs by defendants will perpetuate and exacerbate discriminatory policies which have obtained in the New York City Police Department.

Ronald H Shechtman

RONALD H. SHECHTMAN

SWORN TO BEFORE ME THIS

30TH DAY OF JUNE, 1975.

Rifkie Reich

RIFKIE REICH
Notary Public, State of New York
No. 24-01RE4603265
Qualified in New York County
Commission Expires March 30, 1976

Affidavit of Cornelius J. Behan in opposition

Affidavit of Cornelius J. Behan

UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF NEW YORK

--X

BERALDINE L. ACHA and ARLENE M. EGAN,
EACH individually and on behalf of all
others similarly situated,

Plaintiffs,

- against -

AFFIDAVIT
75 Civ 3128

ABRAHAM D. BEAME, individually and in
his capacity as Mayor of the City of
New York, MICHAEL J. CODD, individually
and in his capacity as Police Commissioner
of the New York City Police Department,
and THE CITY OF NEW YORK, as a public
employer,

Defendants.

--X

STATE OF NEW YORK:
ss.;
COUNTY OF NEW YORK:

CORNELIUS J. BEHAN, being duly sworn, deposes and says:

1. I have been Chief of Personnel, New York City Police Department since February 7, 1974. In that capacity, I am responsible for all personnel matters, including the determination and filling of personnel needs throughout the Police Department, the hiring and termination of personnel, and all personnel relations activities. I make this affidavit in opposition to plaintiffs' motion for a preliminary injunction restraining defendants

Affidavit of Cornelius J. Behan

during the pendency of this action from laying off female police officers.

2. As a result of New York City's severe and continuing budgetary crisis, the Mayor ordered the termination of thousands of municipal workers under the crisis budget, including 6,529 police officers. Of these 6,529 officers, 525 are being laid off to close the budgetary gaps for the fiscal year 1974-1975. The remaining number are to meet the cut in the executive budget for the Police Department for this fiscal year 1975-76. Of the above mentioned 6,529 police officers, approximately 500 are female police officers.

80
male

3. The executive budget for the Police Department, by direction of the Mayor, has been cut by 126.9 million. Since approximately 93% of the Police Department's Executive Budget is for Personnel costs, the cut of 126.9 million therefrom necessitated the laying off of 6,529 police officers.

her
00
8
75+
Male

4. The schedule of these layoffs was made by the New York City Department of Personnel, pursuant to Section 80 of the Civil Service Law, which requires such layoffs to be made in inverse order of appointment date.

5. The effect of these layoffs will be to reduce the police force by approximately 25%

Affidavit ofCornelius J. Behan

6. In order to follow the seniority system set out by Section 80 of the Civil Service Law, the Department has been forced to lay off officers with appointment dates as far back as March, 1969. This seniority date precedes by six months the date that the Department of Personnel last administered separate examinations for the positions of patrolman and policewoman. Accordingly, all police officers who took examination numbers 9080 and 9081 were subject to the terminations to be effective June 30, 1975.

7. If this Court were to grant plaintiffs' motion for a preliminary injunction enjoining the termination of the approximately 500 female police officers presently scheduled for lay off, the department would be forced to lay off at least 500 other police officers, which officers have been on the force for over six years.

8, Moreover, for every day of the 1975-76 fiscal year that the Department is delayed in terminating these 500 officers to complete its required total of 6,529 officers to be laid off, the Department will at some point in the remainder of this fiscal year have to make up the financial cost thereof,i.e., per diem cost times 500 officers, times numbers of days delay. Naturally, some delay is inherent in assembling any additional list of officers to be terminated. Depending upon the extent of such delay, the above mentioned cost might have to be made up by terminating more than 500 additional police officers.

9. The effect of terminating these additional officers with at least six years service with the Department, in addition to the 25% depletion of the police force overall, will further debilitate the Department's ability to provide adequate police protection and the attending services thereto.

10. The inclusion of approximately 500 women amongst the 6,529 officers scheduled for layoff had no sexually discriminatory motive. It was the result of the Department's compliance with Section 80 of the Civil Service Law, which calls for layoffs in inverse order of seniority. Moreover, it was totally consistent with the Police Department's present policy of treating all of its police officers identically.

11. As of December 1973, the Police Department, on its own, determined that the needs of the Department could best be met by having one job title of police officer, open to both men and women. Accordingly, the Department of Personnel gave one examination, (No. 3014) consisting of identical written, physical and medical requirements for all candidates for police officer.

12. It should be noted that, after an intensive minority recruitment program, approximately 3 times as many males as females took examination number 3014. This fact is consistent with the fact that approximately 3 times as many males took the previous 1969 examination number 9080, as females took the 1969 examination number 9081.

17. Accordingly, your deponent submits that the Police Department not only has acted in complete accordance with the statutory mandate regarding the terminations, but has been completely responsive on its own to the changing social patterns of the last few years.

WHERETOFORE, your deponent respectfully urges that plaintiffs' motion for preliminary injunction be denied.

Cornelius J. Behan

CORNELIUS J. BEHAN

Sworn to before me
this 27th day of June, 1975

Notary Public

JOAN [illegible] LONEY
Notary Public [illegible] New York
No. [illegible] 0030
Qualified [illegible] County
Commission E[illegible] March 30, 197[illegible]

Affidavit of James H. Sullivan in opposition

STATE OF NEW **Affidavit of James M. Sullivan**
COUNTY OF NEW YORK

BERALDINE L. ACHA and ARLENE M. EGAN,
EACH individually and on behalf of all
others similarly situated,

Plaintiffs,

- against -

AFFIDAVIT
75 Civ. 3128

ABRAHAM D. BEAME, individually and in
his capacity as Mayor of the City of
New York, MICHAEL J. CODD, individually
and in his capacity as Police Commissioner
of the New York City Police Department, and
THE CITY OF NEW YORK, as a public employer,

Defendants.

STATE OF NEW YORK :
: ss.:
COUNTY OF NEW YORK :

DEPUTY CHIEF JAMES M. SULLIVAN, being duly sworn, deposes and says:

1. I am the Executive Officer, Office of the Deputy Commissioner Administration, New York City Police Department and the chief fiscal officer of the New York City Police Department.

2. My duties include supervision and control of the Expense Budget of the New York City Police Department.

3. I have been advised by counsel that the

injunctive relief demanded in the above entitled action would, if granted, prohibit the lay-off of some 500 female police officers

4. As set forth in the accompanying affidavit of the Chief of Personnel of this Department, Cornelius J. Behan, the result of such action by the court, would in all likelihood require that the Department terminate the services of another group of 500 male police officers.

5. Using the seniority system set forth by Section 80 of the Civil Service Law, further lay-offs of police officers would effect first grade police officers with at least four years of service.

6. For the fiscal year 1975-76, the rate of compensation for first grade police officers will be approximately $20,000.00 per officer. This figure includes:

Base Salary....................	$17,458.00
Holiday Allowance..............	737.00
Uniform Allowance..............	265.00
Night Shift Differential........	961.00
Welfare Benefits...............	400.00
Annuity Payments..............	261.00
TOTAL	$20,082.00

7. In order to prevent the lay-offs of 500 first grade police officers $10,000,000.00 in additional expense

budget monies would be required by this Department should an injunction be ordered by this Court.

8. On information and belief the City of New York would be unable to advance these sums or any part thereof to this Department.

9. In the likely event this action by plaintiffs is unsuccessful on the merits as is demonstrated by defendants memorandum of law, then defendants will be liable to those officers wrongfully discharged in the sum of at least $10,000,000.00.

WHEREFORE, I respectfully concur in defendants request that plaintiffs post security in the form of a bond indemnifying the City of New York in the sum of $10,000,000.00

James M. Sullivan

DEPUTY CHIEF JAMES SULLIVAN

Sworn to before me this

30th day of June, 1975

Notary Public

LINDA [illegible]
Notary Public, State of New York
No. 43 [illegible]
Qualified in [illegible] County
Commission Expires [illegible] 1976

Transcript of proceedings before Hon. Kevin
T. Duffy - June 30, 1975

Transcript of Hearing

eobr

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

-- x

Beraldine L. Acha, Arlene M. Egan, etc., :

Plaintiffs, :

vs. : 75 Civ. 3128

Abraham D. Beame, etc., :

Defendants. :

-- x

Before:

HON, KEVIN THOMAS DUFFY,
District Judge

New York, June 30, 1975
Room 1506 - 2:15 p.m.

APPEARANCES:

Ronald H. Shechtman, Esq.,
Attorney for Plaintiffs

Gary D. Frost, Esq., Assistant Corporation Counsel
Nancy Siegel, Esq., Assistant Corporation Counsel
Lt. Mathew Byrne, Esq.

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(Case called.)

MR. SHECHTMAN: Plaintiff is ready.

THE COURT: Defendant ready?

MR. FROST: Yes, your Honor.

THE COURT: Let me hear from counsel for Miss Acha and Miss Egan.

MR. SHECHTMAN: Your Honor, my name is Ronald H. Shechtman, appearing on behalf of the plaintiffs herein. I am associated with the firm of Murray A. Gordon, P.C.

It is my understanding that last Thursday you referred the attorneys for the parties herein to the case of SEC v. Frank.

I think it would be appropriate now to make reference to that case and discuss that case as indeed as applicable here.

There the Second Circuit considered the appropriateness of a temporary restraining order issued prior to a hearing on the facts and cited three general categories or situations which were relevant to its determination, two of which concerned factual postures which the Court said need not, in fact would not require generally a hearing or full exposition of the facts prior to the issuance of a temporary restraining order.

The final category or situation, which was referred to, was one which the Court found indeed would require some hearing, some exposition of the facts before the Court could at all rule.

That last situation was clearly not here before the Court, was one involving a sharp dispute as to facts. They were in direct contradiction, they raised serious issues which first had to be resolved before the merits could be judged.

That is not the case here. Particularly appropriate today is the affidavit of the plaintiffs that I believe will be filed with this Court, excuse me, the affidavit which the defendants will be filing --

THE COURT: Have you got an affidavit?

MR. BYRNE: Yes, sir.

THE COURT: You haven't filed it?

MR. FROST: We didn't have service, your Honor.

THE COURT: You have got service now. Give it to him.

MR. FROST: I gave it to them. I will give it to you.

MR. SHECHTMAN: An an additional affidavit on behalf of plaintiffs.

THE COURT: All right. What you are telling is you don't think it is necessary to have an evidentiary hearing?

MR. SHECHTMAN: That is correct.

THE COURT: Okay, fine, I understand you.

Mr. Gross.

MR. GROSS: Yes, your Honor.

THE COURT: Have you gentlemen considered stipulating the facts?

MR. FROST: No, your Honor, we havent.

MR. SHECHTMAN: I believe such might be done in a matter of short course.

The facts relied upon are those provided basically by the City of New York and the Police Department.

THE COURT: Do you want to bet? Do you want to stipulate the facts?

Mr. Frost, are you willing to stipulate?

MR. FROST: Your Honor, I have discussed that possibility, but if I might, I would like to state our position on that for the moment and that is that even assuming arguendo, as plaintiffs have alleged, that there has been some form of past sexual discrimination that the cause of action before your Honor is one that addresses Section 80 of the Civil Service Law and in some form that doesn't come out directly stated that the application of that statute is violating certain due process and equal protection rights of the plaintiffs.

The position of the city would be that we are following a bona fide seniorty system --

THE COURT: And that any attack upon that section should be brought under Title 28, United States Code, Section 2284, is that correct?

MR. FROST: That is correct.

THE COURT: That is what I thought you were going to say.

MR. SHECHTMAN: Your Honor, if I may interrupt. Counsel for the City has also given us a memorandum of law where they are taking the position that a three-judge court is not appropriate here.

THE COURT: Sure, but they are arguing if we are wrong in that, we ought to have a three-judge court anyway, right? It is what is known as inconsistent defenses.

MR. SHECHTMAN: May I address that issue, your Honor?

THE COURT: Sure. That is what I am here for. I want you to educate me.

MR. SHECHTMAN: Firstly, I think it is both inappropriate and inaccurate to characterize this case as a challenge on Section 80 of the Civil Service Law.

What is really at issue here is a local particular and specific application of the statute where local officials , rather than state officials, are parties herein.

I respectfully refer the Court to Griffin v. The School Board of Prince Edward County, 377 U.S. 218, where there the state passed certain statutes which allowed Prince Edward County to close down an entire school system in that county.

The Supreme Court found that because it was not a statewide application, because it was a local application of the statute, of local interest, that a three-judge court was not appropriate.

Likewise, Moody v. Flowers, another Supreme Court decision, dealing with a state statute again with purely a local effect and this being a statute determining the composition of a county governing board, the Supreme Court found that a three-judge court was not appropriate and that it was not of such statewide or state effect to require the convention of a three-judge court.

Conversely, Sailors v. Board of Education involved again county government structure except there it was applicable to all the counties within the state and the state statute was being applied on a statewide basis, there the Supreme Court did hold that a three-judge court to be necessary.

Here in the Second Circuit, Serggy v. Republican County Committee again involved what the court called a narrow state action, it did not call for the convention of a three-judge federal court.

THE COURT: Counsel, cutting through it, do you believe that the layoffs here are different or in contravention of Section 80 of the Civil Service Law?

MR. SHECHTMAN: They are not in contravention of Section 80 as I understand it.

THE COURT: So we have two questions basically. The first one is whether Section 80 is facially valid and the second one is whether it is valid as applied, right?

As to the question of facial validity, do you think that it is not?

MR. SHECHTMAN: The attack here would be limited to its application in the particular circumstances.

THE COURT: Okay, fine.

Now, have you had an opportunity to go through the affidavit and memorandum submitted on behalf of the Corporation counsel?

MR. SHECHTMAN: Very briefly, only a moment.

THE COURT: How many witnesses do you have?

MR. SHECHTMAN: At this time there was some question as to whether a hearing would, in fact, be necessary.

THE COURT: We are going to stipulate to the facts.

MR. SHECHTMAN: I believe we will be in a position to stipulate to the facts.

THE COURT: How long will it take for you and Mr., Mr.Frost,how long will it take for you to sit down and stipulate these facts?

MR. FROST: Your Honor, I would not have any --

THE COURT: Do you have to get Mr. Richland's consent?

MR. FROST: I would have to confer with the Police Department.

THE COURT: Lieutenant Byrne, is that right?

MR. BYRNE: Yes, your Honor.

THE COURT: You are here basically as the legal adviser to the Commissioner, is that correct?

MR. BYRNE: Yes, your Honor.

THE COURT: Did you talk to him before you left?

MR. BYRNE: Yes, your Honor.

THE COURT: Are you in a position to set out what the facts are?

MR. BYRNE: I can stipulate to the facts as contained in the affidavits submitted by Chief Bowan as well as a supporting affidavit from Chief Sullivan. I think they accurately set forth the posture of the department.

THE COURT: I am quite sure that those affidavits were drawn up by you and you are a good lawyer. Would you believe you argue the facts like they won't quit, agreed?

MR. BYRNE: I am sorry, I didn't hear you.

THE COURT: Read it.

(Read.)

MR.BYRNE: I would agree with that, your Honor.

THE COURT: Now, I will give you guys fifteen minutes. You are not to leave this courtroom. You are to sit there and figure out a stipulation of facts. Do you understand me, gentlemen?

Unfortunately, this is one of these cases that must be decided almost immediately.

Mr. Shechtman, the police women involved are to be laid off as of the close of business today?

MR. SHECHTMAN: That is correct, your Honor.

THE COURT: I assume that is 5 o'clock?

MR. SHECHTMAN: Whenever their tour of duty would have been scheduled. Some would have been on an earlier tour. This is not a 9 to 5 job.

THE COURT: Mine isn't either.

MR. FROST: Your Honor, I might say one thing following along the theme of cutting through everything.

If for the moment we were to assume the position that in the past there had been some finding of secual discrimination as the facts relate to the Jersey Central case cited in our brief where there definitely was a finding of racial discrimination, there the issue was not what happened in the past but how the bona fide seniority system affected the present and they said although it did affect or have a greater impact on the blacks that since it called for a bona fide system --

THE COURT: Mr. Frost, I am sorry, I am going to cut you off. The basic determination made in any of these cases depends upon the facts. Each and every case depends upon the determination of the facts. I have recognized that what you are trying to do and what your opponent is trying to do is to point out to me that there are certain cases which are analgous,. but I really don't want to hear about them until after such time as you guys have 15 minutes to stipulate to the facts.

MR. FROST: Your Honor, not to postpone the case one bit.

THE COURT: I am not postpoing it either.

MR. FROST: I understand the importance, but I don't think I am in a position to stipulate --

THE COURT: Call yourfirst witness.

Do you want to try to stipulate or do you want to call your first witness? Com one, get him up here, who is he?

MR. FROST: It is the plaintiffs' case, your Honor.

MR.SHECHTMAN: We will defer on the basis --

MR. FROST: It is not my motion.

THE COURT: Call your first witness. Do you want to try to stipulate or not?

MR. FROST: My statement was --

THE COURT: Do you agree to the facts as set out by the plaintiff?

MR.FROST: If we might have one moment, your Honor?

THE COURT: No,now.

I am willing to give you 15 minutes to get this thing in proper fashion and apparently you don't want to take it. Call your first witness.

MR. FROST: Your Honor, I will attempt to stipulate in 15 minutes and we will then see where we are.

THE COURT: You had best. All right, we will take a 15-minute break.

(Recess.)

(In open court.)

THE COURT: 75 Civil 3128. Beraldine Acha v.

Abraham D. Beame.

I have a belief that possibly some of the facts might have been stipulated.

MR. SHECHTMAN: I think some of them, your Honor.

THE COURT: Good.

MR.SHECHTMAN: Maybe we could run through them.

My list indicates that it is stipulated that there were two police women examinations conducted -- strike that -- that there was a police woman examination conducted in 1964.

THE COURT: So stipulated?

MR. FROST: So stipulated.

MR. SHECHTMAN: A police woman's examination conducted in 1968.

MR. FROST: So stipulated.

MR. SHECTMAN: That in 1973 the title "Police Woman" and policeman was merged into police officer?

THE COURT: Lieutenant Byrne, how about it?

MR. BYRNE: For the purpose of the Budget Bureau the titles were not merged. Internally within the department they were merged into one title.

THE COURT: We are agreed as to that stipulation.

MR. SHECHTMAN: In 1973 a police officers examination was given for which applicants --

THE COURT: Let me get it drawn. Stipulated?

MR. FROST: Yes, your Honor.

MR. SHECHTMAN: And for that examination both men and women were eligible.

MR. FROST: Yes, your Honor.

MR. SHECHTMAN: And were given positions on eligible lists according to their relative performance on that examination?

MR. FROST: Yes, your Honor.

MR. SHECHTMAN: With respect to --

THE COURT: Hold on. Without regard to their sex, right?

MR. SHECHTMAN: We will stipulate to that.

MR. FROST: Yes, your Honor.

THE COURT: Okay.

MR. SHECHTMAN: With respect to the 1964 and 1968 examinations for police woman there were more than two examinations for the position of policeman given in the same period.

THE COURT: There was a '64 and a '68 examination according to the plaintiffs' lawyer for police woman.

He also claims that during the period from '64 to '68 there were more than just two examinations for policeman.

MR. FROST: We would use the term patrolman.

THE COURT: Sure, stipulated. Go ahead.

MR. SHECHTMAN: That for each of the 1974 and 1968 examinations the written tests were identical to written tests given for the title of patrolman.

MR. FROST: Yes, your Honor.

THE COURT: Do you know, Mr. Frost? Check with Lieutenant Byrne.

MR. FROST: These are things we conferred on.

THE COURT: You agree, that is the fact?

MR. SHECHTMAN: However, as part of those examinations there were different and distinct physical and medical tests with different height standards among other standards.

MR. FROST: Yes, your Honor.

MR. SHECHTMAN: That for the 1973 examination there were no distinct or different physical and medical tests or height and other such standards between men and women candidates.

THE COURT: Is that true, counsel?

MR. FROST: Well --

THE COURT: I have a certain amount of doubt about it.

MR. FROST: We would have a great deal of difficulty stipulating to that, your Honor.

THE COURT: Is it a little bit too broad, counselor? Believe it or not --

MR. SHECHTMAN: Possibly I can narrow it down.

THE COURT: Do you want to back up? The physical examination of a woman is different than the physical examination of a man.

MR. SHECHTMAN: The standards for the physical examinations were identical for both sexes.

MR. FROST: Your Honor, without having someone here who actually conducted that test from the city, the Department of Personnel of the Police Department, there is nobody present in court today that could possibly stipulate to that fact.

THE COURT: All right.

The 1973 examination both physical and written was intended by the city to be as equal as possible for both men and women. Could you stipulate to that?

MR. FROST: Yes, we would, your Honor.

THE COURT: Okay, fine.

Counsel, do you object to that?

MR.SHECHTMAN: Could I hear that read back, please?

THE COURT: Sure, read it back.

(Read.)

THE COURT: Did you get it?

MR. SHECHTMAN: When given, yes.

THE COURT: When given, sure. Go ahead.

MR. SHECHTMAN: We have also had a stipulation that the sworn personnel data, forms entitled "Sworn Personnel Data" annexed to the complaint here as Exhibits B, C, D and E and dated, respectively, February 1, 1973, June 12, 1975, December 28, 1972 and February 8, 1973 represent reasonably accurate data with respect to the composition of the New York City Police Department?

THE COURT: Mr. Frost, it si your documents. I assume when counsel for plaintiff says that it is reasonably accurate you would agree to that, wouldn't you?

MR. FROST: Reasonably accurate, right, yes.

THE COURT: Okay.

MR. SHECHTMAN: I believe we can always stipulate that a total of approximately 6,529 persons in the rank, in the current rank of police officers are as ofnow contemplated to be laid off.

MR.FROST: Your Honor, we would stipulate to that and just add in there that that is pursuant to the crisis budget which has not finally been made.

MR.SHECHTMAN: I have no knowledge as to the motive.

THE COURT: All right, it doesn't much matter. I can draw a reasonable inference. Go ahead.

MR. SHECHTMAN: We can further stipulate that approximately 500 of those 6,529 are or will be women.

MR. FROST: Your Honor, that figure, although the plaintiffs originally in their paper used 371, we used 500 because it is not clear how many of those women actually left the job so we used the outside figure of 300 as the total impact that could possibly occur, but it is not completely clear at this time.

MR. SHECHTMAN: We will accept that.

THE COURT: If you produce witnesses they would testify to approximately 500.

MR. FROST: At this time, yes, sir.

THE COURT: Stipulated.

MR SHECHTMAN: That exhausts what we were able to exhaust. I believe if we were toproduce witnesses there are certain other facts that might be adduced here.

THE COURT: Come on now.

MR. SHECHTMAN: Mr. Frost, do you have the complaint?

MR. FROST: I will in a moment, your Honor.

THE COURT: Open it up to page 8-B.

MR.FROST: Yes, your Honor.

THE COURT: Have you got it?

MR. FROST: Yes, your Honor.

THE COURT: Leiutenant Byrne, look over his shoulder.

MR. SHECHTMAN: WE have revised those. I think it would be more helpful to the Court --

THE COURT: You mean you have changed them?

MR. SHECHTMAN: Only to reflect a clearer picture. If you look at the affidavit submitted today and the copy of the city I believe that is the same--

THE COURT: Have you got the affidavit, page 2?

MR. GROSS: Yes, your Honor.

THE COURT: As of December 28, 1972 would the city be willing to stipulate that the quota of female police persons was 355 out of a total of 26,414 or thereabouts?

MR. FROST: Your Honor, the only way I would have of comparing that would be to the charts that we would look at as exhibits to the cplaint and we have already stipulated that those reasonably represent the figures.

THE COURT: They reasonably represent them. You think that those personnel data sheets really do reasonably represent the figures, is that correct?

MR. FROST: Yes, your Honor.

THE COURT: Fine.

All right, counsel, what else do you want to prove?

MR. SHECHTMAN: We will stand on those figures and then in addition, your Honor, we believe it can be perferences established that the written tests for patrolman and the written test for police women are identical but because of the quotas, which are set forth in the Police Department reports, that in fact men who received lower scores by reason of those examinations were appointed prior to women because of the quota limitations in the department.

Secondly, that all policewomen were assigned or passed through the police women's bureau and were not as a matter of course assigned to regular patrol duties prior to 1973.

Moreover, that in the period in which there were two examinations for police women there were five different examinations for either patrol officer or a classification called patrol police trainee. .

During the period of a job freeze under the Lindsay Administration between 1969 and 1973 no women were hired into the entry level of the uniformed force of the Police Department while, however, men in the title of police officer trainee were in fact hired into that position and subsequently placed in the position of police officer or patrol officer as of reaching the age of 21.

No such opportunity was available to the women. Also that credit on these examinations for purpose of standing on eligible lists included veterans preference for service in the armed forces and during the relevant periods here there was a draft to which women were not subjected and, accordingly, did not receive veterans preferences on any eligible list established for the Police Department and which credit is also applicable to seniority for the purposes of layoff.

THE COURT: Now wait a second. Are you going to tell me that your clients were discriminated because they weren't drafted? That is a little tough to take.

MR. SHECHTMAN: The effect, however, of veterans preference as applied I think is just relevant for the record here. I don't think it is dispositive of the instant issue.

THE COURT: I am not saying it is. On the other hand, isn't it true that there were women's -- better word corps in all of the armed services during this period of time?

MR. SHECHTMAN: I believe they were including only those enlisted and I believe there were limited quotas.

THE COURT: Wait until equal protection has been amended.

MR.SHECHTMAN: I shall.

THE COURT: What we are basically arguing here and let me see if I can cut through it: Your position is that women were discriminated against in the hiring for the police force for the period prior to 1973. Because of that discrimination they ended up with the least seniority. Because they have the least seniority of Section 80 of the Civil Service Law they are the first to go and in fact it works a double discrimination against them.

One, they were unable to obtain the jobs at the beginning and, two, that they are the first to go, right?

MR. SHECHTMAN: Precisely.

THE COURT: Nice tight argument. Let me hear what you have to say. Do you want to say something.

MR. FROST: Your Honor, first of all, as I said to you before, although we have stipulated certain facts, there are others that we would look to stipulate such as and it only occurred to me afterwards and that is why in that 15 minutes we didn't come to it that three times the numberof males took the 1973 exam as females; that this number was consistent with the amount of males that took the same exam No. 9080 as compared with the female exam of 9081 so that there was some basis --

THE COURT: You don't want to stipulate to that, do you?

Believe it or not, it is necessary.

MR. SHECHTMAN: I think it is irrelevant, exactly.

THE COURT: Go ahead.

MR. FROST: The small concise statement that you gave as to plaintiffs' position we agree with, but our defense to that is that although we are not stipulating to any past discrimination that even if you were to find that, that that is not in the present posture of this case nor the type of relief that plaintiffs are seeking and I think that is the one thing that we have kind of forgotten here is that the relief --

THE COURT: I didn't forget it.

MR. FROST: So that the relief they are seeking is that they plan to remain in their positions and as we have stated in our affidavits, that will cause that many more male patrolmen with more experience to be laid off, in other words, who have greater seniority.

Our position is that based on a bona fide seniority system, which Section 80 is, that we are following the statute and the statute has state application. The economic situation in the city is causing us to operate under that statute and it may cause other cities if they haven't already and I don't know that not to be true that Buffalo or some --

THE COURT: Go ahead. Would you believe I filed a decision on the Department of Transportation this morning. Go ahead.

MR. FROST: So that the other position that we would take is that this is a preliminary injunction. I imagine we are at the hearing stage and as I am sure your Honor is well aware, one of the elements of proving a preliminary injunction or granting a preliminary injunction would be a showing of irreparable harm. There has been no showing by plaintiffs' counsel of irreparable harm.

If you apply the balancing of equities test that the balance surely falls in the city's favor and we have so stated that in our affidavits and we have asked that a bond be issued if such injunction were to be ordered.

We also feel that there has been at this time no true showing of likelihood of success. That would be it, your Honor.

THE COURT: All right.

Miss Siegel, do you want to be heard?

MISS SIEGEL: Your Honor, I would just like to take this opportunity to distinguish two cases that plaintiffs have relied on and did rely on on the last time we met on Thursday where the Detroit Police Department case and the Lloyd case. Some sort of interlocutory relief was given on behalf of plaintiffs pending final determinations.

I would just like to note that in the Lloyd case which involved the Cleveland Police Department the local Civil Service Rule had already been stepped aside from by the city in application to the layoffs of minorities and that quota system had not been applied when the issue came to the layoff of women. In this instance the Police Department and the City Department of Personnel has not stepped aside from Section 80 in determining any schedule of layoffs as relevant hereto.

In the Detroit Police Department case prior findings had been made establishing discriminatory hiring and promotion practices but more important the preliminary injunction that the Court did order as regarding the layoffs effectuated the situation whereby not only were fewer police officers to be laid off and not only were the police officers to which the order was directed, which were not laid off, federally funded police officers, but no officer male or female who had not originally been scheduled to be laid off was laid off as a result of the Court's order. As we pointed out briefly, that would not be the case if this Court were to enjoin the scheduled layoffs as is.

Thank you.

Transcript of Hearing

THE COURT: Lieutenant Byrne.

MR. BYRNE: Your Honor, the plaintiffs' memorandum of law indicates as the question presented whether the use of seniority as a basis for terminating the employment, et cetera.

The seniority system that they are referring to is contained in Article 80 of the Civil Service Law. We have no discretion under that existing statute to lay off in any other order but inverse order of seniority. I submit that the plaintiffs would appear to be inferentially attacking the validity of the statute without articulating that attack.

THE COURT: Mr. Frost. At the same time you are moving to dismiss the action in view of the fact that it was not brought under title 28, Section 2284, is that correct?

MR. FROST: 2284, right, your Honor.

THE COURT: Both sides agree that I can draw whatever reasonable inferences I please from the stipulated facts? You have to agree.

MR. FROST: Certainly we do and I am sure as your Honor is aware that that would only shift the burden to the city for the defendants to come up with some type of a basis for their actions in the past.

THE COURT: I don't know what you said. Read it back.

MR. FROST: What I am saying, your Honor, is --

THE COURT: Read it back.

(Read.)

THE COURT: Do you want to excise part of that?

MR. FROST: I might want to explain it.

THE COURT: Sure, go ahead, explain it to me.

MR. FROST: I thought your Honor's statement implied that the inferences that you can draw, since basically the stipulations are as to statistical facts and that it would shift the burden to the defendants to come up with some either rational basis or compelling state interest by the defendants.

THE COURT: I am with you now. Okay, I understand.

All right.

MR. FROST: It takes me a few times, but I make it.

THE COURT: It takes me a few times sometimes, too, but don't worry about it.

Go ahead.

MR. FROST: Before we got into that, you had asked me about whether we were moving under that section and

I said yes, we were for failure to state a substantial type of question.

THE COURT: Do you have any other motion? Make them now if you have got any.

MR. FROST: Well, the motion to deny under that section to deny any form of temporary restraining order and the motion to deny the preliminary injunction that I think the plaintiffs have moved for.

THE COURT: Okay. Counsel.

MR. SHECHTMAN: A few points.

THE COURT: Do you have any motions?

MR. SHECHTMAN: We renew our application.

THE COURT: Absolutely. You don't need to renew it. That is the one I am going to be handling.

MR. SHECHTMAN: It might be helpful for the Court if I told the Court to note the case of Hagans v. Levine, 415 U.S. --

THE COURT: Is this in your brief?

MR. SHECHTMAN: No, it is not. This is in your response to three-judge jurisdiction which point we seem to have returned to. This is a 1974 Supreme Court ruling. We believe exactly on point with respect to the jurisdiction of the District Court here and yourself over the instant dispute with reference to a three-judge court basically on the theory of the existence of a substantial constitutional question and the pendant jurisdiction of this Court over a statutory claim here under Title 7 and we believe the case speaks directly here.

Secondly, if I may, your Honor, and again refer your attention to the affidavit we submitted today if we can correct some statistics that are very important on that chart in light of the new information --

THE COURT: Which one is there?

MR. SHECHTMAN: The most jpdated chart on page 2 of my affidavit.

Chart No. 3 on the basis of the information we have received today as to the number of layoffs should be amended to -- the title should be "Composition of Rank Police OfficerFemale" and by today's statisics it indicates that 180 will remain, this is as of 7/1/75 out of a total force of 19,407 leaving in the rank of police officer female point 93 per cent.

Chart No. 5 percentage reduction of police officers by sex, female officers terminated 500. Male police officers terminated 6029.

Percentage of female officers terminated --

THE COURT: You say 6029?

MR. SHECHTMAN: Right.

Thus that the per cent reduction in female police officers will be 73.5.

Percent reduction in male police officers will be 25.9 per cent.

THE COURT: Okay.

Anything else?

These layoffs are supposed to take place today, is that correct?

MR. BYRNE: Yes, sir.

THE COURT: Thanks.

All right, gentleman, I will try and get a decision to you as fast as I possibly can.

I assume that neither one of you would waive findings and conclusions, is that correct?

MR. SHECHTMAN: That is correct.

MR. FROST: Yes, your Honor.

THE COURT: You are not going to waive it?

MR.FROST: No.

THE COURT: I didn't think so.

Allright. I will do it as fast as I can and get it to you.

Counsel, I want to see both of you in the robing room.

(Time noted: 3:45 p.m.)

Opinion and Order of Hon. Kevin T. Duffy
dated July 1, 1975

Opinion and Order

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

-- x

BERALDINE L. ACHA and ARLENE M. EGAN, :
each individually and on behalf of
all others similarly situated, :

Plaintiffs, : OPINION AND ORDER

-against- : 75 Civ. 3128

ABRAHAM D. BEAME, individually and :
in his capacity as Mayor of the City
of New York; MICHAEL J. CODD, indi- :
vidually and in his capacity as
Police Commissioner of the New York :
City Police Department, and THE CITY
OF NEW YORK, as a public employer, :

Defendants. :

-- x

APPEARANCES:

MURRAY A. GORDON, P.C.
Attorney for Plaintiffs
By: Marina Angel, Esq.
Of Counsel

HONORABLE W. BERNARD RICHLAND
Corporation Counsel
Attorney for Defendants
By: Gregory D. Frost, Esq.
Nancy E. Siegel, Esq.
Of Counsel

KEVIN THOMAS DUFFY, D.J.

This action was instituted by the named plaintiffs on behalf of themselves and other female police officers to stay their threatened dismissal in the New York City police force. The dismissal is proposed by budgetary cutbacks and is to be conducted under Section 80 of the N.Y. Civil Service Law (McKinney 1973) which basically requires that those employees hired last will be first to be laid off in the event of a reduction in force. The action is brought under 42 U.S.C. §§ 1983 and 2000e-2, along with claimed deprivation of rights under the due process and equal protection clauses of the Fourteenth Amendment of the United States Constitution.

Plaintiffs request class determination but have not moved for the appointment of a three judge court pursuant to Section 2284 of Title 28 U.S.C.

Plaintiffs contend that from 1963 to 1969, no women were permitted to take a competitive examination for the position of policewoman (since that time the title "police officer" has been construed to cover both males and females.) However, in 1969, a Civil Service test was given for the post of policewoman and starting in 1972, appointments were made of the named plaintiffs and members of a class. During the same period, at least five examinations were given for policemen, and it is claimed by the plaintiffs that this situation produced discrimination against females on the New York City police force.

The layoffs now proposed will reduce the number of females on the police force by 73.5 per cent, while only 23.9 per cent of males will be discharged.

A claim similar to that raised here is to be found in Jersey Central Power & Light Co. v. Local Union 327, etc., 508 F.2d 687 (3d Cir. 1975), and in Waters v. Wisconsin Steel Works, 502 F.2d 1309 (7th Cir. 1974). In both of these cases racial discrimination was claimed whereby blacks were discharged under a personnel cutback which occurred after an effort to alleviate the employer's former racially discriminatory hiring practices. The cutback came when the employer attempted to follow a recognized bona fide seniority system whereby those last hired were first to be relieved of their duties. In both cases the circuit courts held that such a seniority system was permissible.

The fact that the case at bar is bottomed on sexual discrimination does not alter the underlying principle which permits such a seniority system as approved by Section 80 of the New York Civil Service law. Indeed, such is the mandate of the Congress, found in Section 2000e-j of Title 42 U.S.C., which prohibits "any employer . . . to grant preferential treatment to any individual or any group because of . . . sex." To issue the order sought by the plaintiffs in this case would be directly contrary to that section and to the teachings of other circuits. Under the circumstances, the injunctive applications of the plaintiffs will be denied and the cause will be dismissed.

SO ORDERED.

U. S. D. J.

Dated: New York, New York

July 1, 1975.

Notice of Appeal dated July 2, 1975

Notice of Appeal

UNITED STATES DISTRICT COURT FOR
THE SOUTHERN DISTRICT OF NEW YORK

---X

BERALDINE L. ACHA, and ARLENE M. EGAN,
each individually and on behalf of all
others similarly situated,

Plaintiffs,

-against-

ABRAHAM D. BEAME, individually and in
his capacity as Mayor of the City of
New York, MICHAEL J. CODD, individually
and in his capacity as Police Commissioner
of the New York City Police Department
and THE CITY OF NEW YORK, as a public
employer,

Defendants.

---X

NOTICE OF APPEAL

Class Action
75 CIV 3128

S I R S:

Notice is hereby given that BERALDINE L. ACHA and ARLENE M. EGAN, each individually and on behalf of all others similarly situated, hereby appeal to the United States Court of Appeals for the Second Circuit from the order denying plaintiffs' motion for a preliminary injunction restraining and prohibiting defendants and their agents, servants and employees from terminating the employment of any female Police Officer employed by the New York City Police Department, and from the final judgment in all respects, herein entered on the 1st day of July, 1975.

Dated: New York, New York
July 2, 1975

YOURS, Etc.,

BY: Ronald H Shechtman
Ronald H. Shechtman

MURRAY A. GORDON, P.C.
Attorneys for Plaintiff
666 Third Avenue
New York, New York, 10017
212-661-7900

TO: Corporation Counsel
of the City of New York.

Letter dated July 30, 1975-letterhead of
Murray A. Gordon, P.C.

Letter Dated July 30,1975

MURRAY A. [illegible]RDON, P.C.
[illegible]
[illegible]

[illegible]
[illegible]
[illegible]
[illegible]

(212) [illegible] 7900
CABLE ADDRESS
"MURA[illegible]OR"

July 30, 1975

The Honorable District Judge Kevin T. Duffy
United States District Court
Southern District
United States Courthouse
Foley Square
New York, New York 10007

Hon. Judge Duffy:

Pursuant to my telephone conversation of July 29, 1975 with your law secretary and with Mr. Raymond F. Burghardt, the Clerk of Court, I am enclosing herewith a proposed judgment in the above-entitled action which provides for the denial of the application of the plaintiff for a preliminary injunction and dismissal of the complaint with leave to amend.

We are respectfully requesting leave to amend the complaint in order that we may be enabled to add, as a separate count, a factual situation which obtains here and comes within that aspect of the July 16, 1975 decision of the United States Court of Appeals for the Fifth Circuit in Watkins v. United Steel Workers, No. 74-2604, rev'g 369 F. Supp. 121 (E.D. La. 1974), wherein it is indicated that remediation by way of seniority preference is available at the instance of those members of a minority group who can demonstrate that they are victims of the discrimination which it is sought to remediate by such preference. We are enclosing a copy of Watkins for your convenience.

The Police Department notices of dismissal, which caused this action to be brought, were effective June 30, 1975 and were still being served on June 24, 1975. The summons here is dated June 26, 1975 and the plaintiffs' motion for relief was returnable and heard on June 30th. The circumstances compelled expedition, and the pleadings and proof tend to reflect the speedy processing of this complex matter by the plaintiffs. There is, therefore, absent from the pleading a sufficiently explicit development of facts showing that a substantial number of the members of the class represented by the plaintiffs were subject to and victims of the past discriminatory hiring practices in the New York City Police Department which resulted in the lesser seniority of such female police officers and in their current earlier dismissal and later potential reinstatement than the male police officers who benefitted from

Letter Dated July 30, 1975

MURRAY A GORDON

The Hon. District Judge Kevin [illegible]. Duffy
July 30, 1975
Page No. 2

such discrimination. Such facts, according to *Watkins*, would entitle plaintiffs here to relief, and the cases cited in this Court's decision of July 1, 1975 are not to the contrary. While we believe that the complaint here may be capable of construction so as to constitute the plaintiffs and others in the class as individual victims of past discrimination entitled to relief from such past discrimination as caused them to have lesser seniority (see Complaint paragraphs 25, 32; see also Acha aff. paragraphs 5 - 10 and Egan aff. paragraphs 5 - 10), the circumstances under which the complaint was drawn, and the guidance only very recently provided by *Watkins*, make it imperative that an opportunity be provided to plead the precise facts which would bring action within the scope of the [illegible]mediation contemplated by *Watkins*.

The facts intended to be pleaded in the amended complaint would demonstrate that a substantial number of the class represented by the plaintiffs here were direct victims of past actions of discrimination in the Police Department. Prior to January 1973 the number of women in the New York City Police Department was infinitesmal,--approximately 1% of the department force resulted from a quota of approximately 350 women in the entire department. In addition, before 1969 many more examinations were given for men than for women seeking admission to the department, and in the 1969 examination women were again discriminated against by reason of a lower eligibility age for men and opportunities for men to be appointed as trainees denied to women. Even after 1973 men were appointed from 5 different lists, women from one. We are now able to add that during the period preceding 1973,--the earliest date at which it may be argued that hiring discrimination came to an end in the New York City Police Department,--substantial numbers of the class would have been eligible to take and would have taken examinations for appointment to the department if not for the described discriminatory practices. We intend to allege and establish from the dates of birth of dismissed women, and other data, which of them would have been of an eligible age (and otherwise eligible) to take the examinations confined to men; which would have been eligible to compete for the trainee examinations confined to men; and which were otherwise discriminated against by reason of the pre-1973 quota of women. Such a showing would, pursuant to *Watkins*, warrant appropriate relief, and we seek leave to make such a showing.

The submission of a proposed judgment is here appropriate notwithstanding the July 1, 1975 decision of the Court. Once aware of *Watkins*, we had intended to seek leave to amend the pleadings by way of a post-judgment motion under Rules 59(e) and/or

Letter Dated July 30, 1975

60(b), F.R. Civ. Pro., joined with a motion for leave to amend pursuant to Rule 15(a). See Market v. Swift & Co., 173 F. 2d 517 (C.A. 2, 1949); United Grocers' Co. v. Sau-Sea Foods, Inc. 151 F. Supp. 260 (S.D.N.Y. 1957). In the preparation of such a motion we checked the docket and learned for the first time on July 29 that no judgment had been entered. It would, therefore, be inappropriate at this time to proceed by way of any post-judgment motion, and all of the considerations we intended to raise upon such a motion are properly before this Court upon the instant application for the proposed judgment which has been submitted. Nor is it necessary to proceed by motion under Rule 15(a) to amend the pleading since, once again, any matters implicated by such a motion are covered by the judgment to be entered.

We are aware that a notice of appeal has been filed. But that does not affect this Court's jurisdiction over the judgment here proposed. For an appeal from a judgment is predicated upon entry of that judgment (28 U.S.C.A. Section 2107), and here no entry of judgment was made by the Clerk who alone can do so (Rules 58, 79(a), F.R. Civ. Pro.). Whatever effect the notice of appeal may have with respect to this Court's interlocutory order denying provisional relief, it does not bring any non-entered judgment up for appeal and leaves open for this Court its normal and regular authority to fashion a judgment. And even if the pendency of the appeal is deemed relevant to the disposition of the present application, this Court is empowered to request the remittitur of the appeal by the Court of Appeals to this Court for such purpose (Baltimore S.S. Co. v. Phillips, 9 F. 2d 902 (C.A. 2, 1925); see also Market v. Swift & Co., supra) and such a process is herewith respectfully requested if the appeal is deemed viable at this time as to the judgment.

Respectfully yours,

MURRAY A. GORDON, P. C.

By: Murray A. Gordon
MURRAY A. GORDON

MAG:hs
enc.
cc: Raymond F. Burghardt,
Clerk of Court
Corporation Counsel,
Attorney for defendants

Letter dated August 7, 1975-Letterhead of
New York City Department of Law

Letter Dated August 7, 1975

The City of New York
LAW DEPARTMENT
MUNICIPAL BUILDING
NEW YORK, N. Y. 10007
W. BERNARD RICHLAND,
XXXXXXXXXXXXX Corporation Counsel

August 7, 1975

The Honorable Kevin T. Duffy
United States District Court
for the Southern District of New York
United States Courthouse
Foley Square
New York, New York 10007

Re: Beraldine L. Acha, et al.
v. Abraham D. Beame, et al.
75 Civ 3128

Dear Judge Duffy:

In reference to the letter of July 30, 1975 to you from Murray A. Gordon, Attorney for plaintiffs in the above-captioned matter, the City defendants herein urgently oppose both the substance and the procedure of plaintiffs' request for leave to amend their complaint.

Plaintiffs submit that the recent decision in Watkins v. United Steel Workers, No. 74-2604 (5th Cir. July 16, 1975), "indicated that remediation by way of seniority preference is available at the instance of those members of a minority group who can demonstrate that they are victims of the discrimination which it is sought to remediate by such preference." Defendants are compelled to respond with that Court's own words:

> We specifically do not decide the rights of a laid-off employee who could show that, but for the discriminatory refusal to hire him at an earlier time than the date of his actual employment, or but for his failure to obtain earlier employment because of exclusion of minority employees from the work force, he would have sufficient seniority to insulate him against layoff. (Emphasis added.)

BNA Daily Labor Report 7/18/75 No. 139 p. 2.

Letter Dated August 7, 1975

In addition counsel's letter states that "The cases cited in this Court's decision of July 1, 1975 are not to the contrary." In fact, *Waters* v. *Wisconson Steel Works* 502 F 2d 1309 (7th Cir. 1974) dealt directly with the question of the application of a *bona fide* seniority system to plaintiff Waters, who had, in fact, suffered prior discrimination. Having affirmed the District Court's finding of prior discrimination in hiring practices by the defendant, the Circuit Court nonetheless upheld the bona *fide* seniority system under the language and legislative history of Title VII. Similarly, in *Jersey Central Power & Light Co*. v. *Local Union 327 et al*., 508 F 2d 687 (3d Cir. 1975), the court upheld the *bona fide* seniority system despite its disparate impact on women and minorities who had recently been hired pursuant to a conciliation agreement with EEOC. The conciliation agreement, of course, came about after a charge of discrimination in violation of Title VII was filed and the EEOC investigation found reasonable cause to believe there was discrimination in hiring and job assignments.

Accordingly, the *Watkins* decision provides no basis for a decision contrary to the July 1, 1975 decision of this Court. In fact, Watkins is further support for that decision to the extent it upholds a *bona fide* seniority system based on the facts before it. And, there is no basis in that decision of any remediation through fictional seniority.

As to plaintiffs' procedures for seeking leave to amend through a proposed judgment, defendants respectfully refer the Court to *Swan* v. *Board of Higher Education*, 319 F 2d 56 (2d Cir. 1963). In that case an opinion was entered on the clerk's docket book but the clerk had failed to prepare and file a separate document embodying the order, pursuant to Rule 10 of the General Court Rules for the Southern District. The Court in *Swan* held that nothing in Rule 15a of the Federal Rules of Civil Procedure suggests an exception to its terms for the failure of the clerk to perform a ministerial function. The Court discussed the purpose of the clerk's function as to avoid delay in initiating post-judgment proceedings that might be caused by inadvertence of the district judge in neglecting to direct the clerk to formally enter a judgment. 319 F 2d 56, 61.

Accordingly, the Court, stating that the issue was determined on the day the opinion was filed with the words "So ordered", and entered in the clerk's docket books, held that plaintiff knew the decision that day and could have moved to amend instead of filing a notice of appeal. Plaintiff therein was seeking to capitalize on a

Letter Dated August 7, 1975

mere clerical error which in no way affected his rights. Defendants urge that, at least, Swan is dispositive of the issue of plaintiff's proposed judgment herein by which plaintiffs seek the Court to order leave to amend and therefore requires plaintiffs to move for such leave. However, in addition defendants submit that there is no basis for that leave to be granted.

Although leave to amend may be granted liberally under the federal rules, its purpose is to afford the maximum opportunity for a claim to be decided on the merits, rather than procedural technicalities. In re Credit Industries Corp. 250 F. Supp. 582 (D.C.N.Y. 1966), aff'd, in part, rev'd in part 366 F 2d 402, 411 (2d Cir. 1966); Brown v. Dunbar, et al. 189 F 2d 871, 875 (2d Cir. 1951). However, the Court is not required to indulge in a futile gesture such as where the complaint, as amended, would be subject to dismissal. DeLoach v. Woodley, 405 F 2d 496, 497 (5th Cir. 1969). Since a dismissal is with prejudice unless the Court specifies otherwise, Asher v. Harrington, 461 F 2d 890, 895 (1972), if, as here, the allegations of other facts present no other issue than that passed on by the Court, the Court need not allow such amendment to the complaint. Bonanno v. Thomas, 309 F 2d 320 (9th Cir. 1962); Fuhrer v. Fuhrer, 292 F 2d 140 ,143(7Cir.1971)See also, Asher, supra.

Thus, defendants urge that as the opinion and order were filed by the clerk of the Court on July 2, 1975, the ministerial error resulting in no docketing of a separate order and judgment pursuant thereto under Rule 10 of the General Rules cannot, under Swan and moreover, should not, be used against defendants to allow the amendment of the complaint as of right . Moreover, there is no basis under a Rule 15a, 59e or 60b to warrant such amendment to allege additional facts because of the decision in Watkins, supra. The issue before this Court and upon which its July 1,1975 decision was based is in no way affected by that decision.

Should this Court grant plaintiff's request, defendants hereby renew their motion to dismiss this action. Although this Court did not order the parties to "settle order", and defendants submit it is unnecessary under Rule 10, supra, in light of plaintiffs' submission of a proposed judgment, defendants include herewith their proposed counter-judgment.

Sincerely,

W. BERNARD RICHLAND
Corporation Counsel
Attorney for Defendants

BY: Nancy E. Siegel
NANCY E. SIEGEL

Letter Dated August 7, 1975

Enclosure

cc: Murray A. Gordon
Attorney for Plaintiffs

Raymond F. Burghardt
Clerk of the Court

Proposed Counter-judgment

UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF NEW YORK

BERALDINE L. ACHA and ARLENE M. EGAN, each individually and on behalf of all other similarly situated,

Plaintiffs,

-against-

ABRAHAM D. BEAME, individually and in his capacity as Mayor of the City of New York, MICHAEL J. CODD, individually and in his capacity as Police Commissioner of the New York City Police Department and the CITY OF NEW YORK, as a public employer,

Defendants.

PROPOSED
COUNTER-
JUDGMENT

75 Civ 3128

This action came on for hearing before the Court, Honorable Kevin T. Duffy, District Judge, presiding, and the issues having been duly heard and a decision having been duly rendered ,

It is Ordered and Adjudged

that the application of plaintiffs for a preliminary injunction be denied, and

that the action herein be dismissed.

Dated: New York, New York
August , 1975

Clerk of Court

U.S.D.C.

Letter dated August 15, 1975-letterhead of
Murray A. Gordon, P.C.

Letter Dated August 15, 1975

August 15, 1975

The Honorable Kevin T. Duffy
United States District Court
Southern District of New York
United States Courthouse
Foley Square
New York, New York 10007

Re: Geraldine L. Acha, et al., v. Abraham D. Beame, et al., 75 Civ. 3128

Honorable Sir:

We are submitting this letter in response to that of the Assistant Corporation Counsel, dated August 7, 1975, concerning plaintiffs' proposed judgment in the above entitled matter.

Defendants' counsel contends that Watkins v. United Steel Workers, No. 74-2604 (5th Cir. July 16, 1975), "provides no basis for a decision contrary to the July 1, 1975 decision of this Court." We respectfully submit that counsel is in error in her analysis of Watkins, and that the proposed judgment of plaintiffs with leave to amend the complaint will allow the presentation of valid, substantial and triable issues of fact and law with particular respect to the class of plaintiffs who were victims of past discrimination and have accordingly been injured by reason of defendants' action herein at issue.

As evident in the excerpt of Watkins cited by defendants' counsel, the Fifth Circuit specifically did not decide the rights of employees laid-off under a seniority system because of their prior discriminatory exclusion from the work force, and ruled that remediation for such employees was not necessarily, or by binding precedent, precluded under Title VII. Plaintiffs herein propose to amend their complaint to raise specifically the issue of the entitlement to relief of the class or subclass of plaintiffs, who have been effectively denied seniority credit or tenure because of discriminatory hiring practices which precluded or deferred their employment. The Court in Watkins found that neither

Waters v. Wisconsin Steel Works, 502 F2d 1309 (7th Cir. 1974), nor Jersey Central Power & Light Co. v. Local Union 327, 508 F2d 687 (3d Cir. 1975), were dispositive of the entitlement of such plaintiffs to relief under Title VII.

The Court in Watkins also found that the seniority system there at issue was not in violation of 42 USC §1981 in the specific circumstances there presented precisely and only because of the absence of any showing of past discrimination against particular plaintiffs which affected their seniroity status and tenure. By implication, then, the Fifth Circuit considered that a §1981 violation would be established where seniority freezes past discrimination. The Court acknowledged in Watkins the dual attack by plaintiffs in challenging the defendants' employment practices under both Title VII and 42 USC §1981, and rendered specific holdings with respect to both bases of plaintiffs' complaint. The Fifth Circuit did not accept defendants' argument in Watkins that the §1981 challenge was subsumed by Title VII or that separate and independent relief was not available under §1981. Plaintiffs here have analagously alleged violations of both Title VII and 42 USC §1983. We respectfully submit that there is no direct and substantial judicial authority which precludes remediation under 42 USC §1981 or §1983 for plaintiffs herein who were victims of prior discriminatory action.

The leave to amend the complaint which plaintiffs hereby seek will place squarely before this Court allegations and issues of specific past discriminatory action, which has directly affected and injured certain plaintiffs in the deprivation of seniority status and job tenure. Exposition of such allegations, we firmly believe, will demonstrate a significant showing and proof in this regard.

Defense counsel also challenges plaintiffs submission of a proposed judgment by relying on Swan v. Board of Higher Education, 319 F. 2d 56 (2d Cir. 1963). Swan held that an amended complaint could not be served as a matter of right, without leave of court to do so, merely because the clerk has failed to enter judgment [illegible] dismissal of the original complaint. The plaintiffs here are in compliance with Swan. We have not served an amended complaint, and we are seeking leave to do so in the only way now available to us, i.e., by submission of a proposed judgment granting leave to amend. There is no judgment which we could move to amend pursuant to Rule 59(e) to incorporate leave to amend the complaint, or from which we could seek relief pursuant to Rule 60(b). Submission of the proposed judgment raises all the issues of a motion for leave to amend pursuant to Rule 15(a). The substantive arguments by both sides on the propriety of allowing amendment confirms that the motion here is in all material respects the application for leave to amend contemplated by Swan.

For the foregoing reasons, we respectfully urge that plaintiffs' proposed order be entered.

Very truly yours,

MURRAY A. GORDON, P. C.

By: ______________________
MURRAY A. GORDON

MAG:pb

cc: Nancy E. Siegel, Esq.
Assistant Corporation Counsel

BY HAND

Judgment entered September 2, 1975

(14)

Judgment

~~Entered~~ September 2, 1975

Duffy, J.

U. S. DISTRICT COURT
FILED
AUG 29 1975
S. D. OF N. Y.

W.C.

UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF NEW YORK

BERALDINE L. ACHA and ARLENE M. EGAN, each individually and on behalf of all other similarly situated,

Plaintiffs,

-against-

ABRAHAM D. BEAME, individually and in his capacity as Mayor of the City of New York, MICHAEL J. CODD, individually and in his capacity as Police Commissioner of the New York City Police Department and the CITY OF NEW YORK, as a public employer,

Defendants.

PROPOSED
COUNTER-
JUDGMENT

75 Civ 3128

This action came on for hearing before the Court, Honorable Kevin T. Duffy, District Judge, presiding, and the issues having been duly heard and a decision having been duly rendered ,

It is Ordered and Adjudged

that the application of plaintiffs for a preliminary injunction be denied, and

that the action herein be dismissed.

JUDGMENT ENTERED 9/3/75

Dated: New York, New York
August 27, 1975

Kevin Thomas Duffy
U.S.D.C.

Raymond F. Burghardt
Clerk of Court

Plaintiffs' Notice of Appeal dated Sept. 3, 1975

Notice of Appeal Dated
September 3, 1975

UNITED STATES DISTRICT COURT FOR
THE SOUTHERN DISTRICT OF NEW YORK
--X

BERALDINE L. ACHA, and ARLENE M. EGAN,
each individually and on behalf of all
others similarly situated,

Plaintiffs,

-against-

ABRAHAM D. BEAME, individually and in
his capacity as Mayor of the City of
New York, MICHAEL J. CODD, individually
and in his capacity as Police Commissioner
of the New York City Police Department
and THE CITY OF NEW YORK, as a public
employer,

Defendants.

--X

NOTICE OF APPEAL

Class Action
75 CIV 3128

SIRS:

NOTICE is hereby given that the plaintiffs BERALDINE L. ACHA and ARLENE M. EGAN, individually and on behalf of all others similarly situated, hereby amend their notice of appeal to the United States Court of Appeals for the Second Circuit, dated July 2, 1975, so as to include therein their appeal from the order and judgment made by U.S.D.C. Judge Kevin T. Duffy dated August 28, 1975 and entered September 2, 1975 in the office of the Clerk of the United States District Court for the Southern District of New York denying the application of plaintiffs for a preliminary injunction and dismissing the action without leave to amend the complaint.

Dated: New York, New York
September 3, 1975

Yours, etc.

MURRAY A. GORDON, P.C.
Attorneys for Plaintiffs
666 Third Avenue
New York, N. Y. 10017
212-661-7900

By
MURRAY A. GORDON

TO: W. BERNARD RICHLAND, ESQ.
Corporation Counsel
of the City of New York

Opinion of United States Court of Appeals of
February 19, 1976.

UNITED STATES COURT OF APPEALS

For the Second Circuit

No. 397 -- September Term 1975

Argued December 5, 1975 Decided February 19, 1976

Docket No. 75-7388

UNITED STATES COURT OF APPEALS
FILED
FEB 19 1976
A. [illegible]
SECOND CIRCUIT

75-7388

- -

GERALDINE L. ACHA and ARLENE M. EGAN, each i[illegible]vidually and on behalf of all others simila[illegible] situated,

Appellants,

-against-

ABRAHAM D. BEAME, individually and in his capacity as Mayor of the City of New York, MICHAEL J. CODD, individually and in his capacity as Police Commissioner of the New York City Police Department, and THE CITY OF NEW YORK, as a public employer,

Appellees,

- -

Before KAUFMAN, Chief Judge, SMITH and FEINBERG, Circuit Judges.

Appeal from dismissal by United States District Court for the Southern District of New York, Kevin T. Duffy, J., of employment discrimination suit challenging layoffs under seniority system of female police officers.

Reversed and remanded.

MURRAY A. GORDON, New York, N.Y. for Appellants.

LEONARD KOERNER, New York, N.Y. (W. Bernard Richland, Corporation Counsel of the City of New York; L. Kevin Sheridan, Gregory D. Frost, on the brief) for Appellees.

LUTZ ALEXANDER PRAGER, Attorney, Equal Employment Opportunity Commission, Washington, D.C. (Abner W. Sibal, General Counsel; Joseph T. Eddins, Associate General Counsel; Beatrice Rosenberg and Charles L. Reischel, Attorneys, on the brief) as Amicus Curiae.

FEINBERG, Circuit Judge:

This class action by two former female police officers of the New York City Police Department raises important questions as to the effect of a facially neutral seniority system on enforcement of the national policy against sex discrimination. Faced with notice of layoff because of New York City's well-publicized fiscal problems, plaintiffs brought suit under Title VII of the Civil Rights Act of 1964, 42 U.S.C. §§ 2000e et seq., and under 42 U.S.C. § 1983 and the fourteenth amendment against the City of New York, its Mayor and its Police Commissioner. The gist of the complaint was that since the threatened layoffs were based on seniority, they were sex-discriminatory because women had been prevented from obtaining the seniority necessary to avoid layoff by defendants' unlawful discrimination against them in the past. Judge Kevin T. Duffy of the United States District Court for the Southern District of New York denied plaintiffs' motion for a preliminary injunction and dismissed the complaint; the judge also refused ~~plaintiffs~~ permission to amend the complaint. In their appeal to this court, plaintiffs are supported by the Equal Employment Opportunity Commission as amicus curiae. For reasons set forth below, we reverse the order of the district court and remand for further proceedings.

I

The facts are simple and, for purposes of this appeal, undisputed. Appellants Beraldine L. Acha and Arlene M. Egan represent a class of 371 female officers who were laid off on June 30, 1975. Before 1973, women were hired by the Police Department only for the job title Policewoman, for which there was an official quota amounting to 1.34 per cent of the total number of police officers. At the end of 1972, there were 355 Policewoman positions as compared to more than 26,000 Patrolmen. From 1964 to 1969, only two examinations for Policewoman were given, while many more examinations were offered for men applying to be Patrolmen. From 1969 to 1973, a hiring freeze applied to both Patrolman and Policewoman positions, but men could apparently be promoted to Patrolman from the position of Police Trainee, which was not open to women.

In January 1973, the titles of Patrolman and Policewoman were merged into the title of Police Officer. Men and women appointed thereafter received the same medical examination and the same training. However, appointments were made from separate lists in a ratio of four men to one woman, regardless of their comparable grades on examinations that had been identical, although given separately. Thus, some men were appointed prior to women who had received higher grades. By June 1975, the percentage of ~~women~~ female police officers was 2.62 per cent.

On June 30, 1975, New York City laid off 4,000 police officers because of its fiscal crisis. These layoffs were made in accordance with section 80 of the New York Civil Service Law, reproduced in the margin,[1] which provides for the familiar last-hired, first-fired method of layoff. Since so many females had been hired only recently, this system affected them much more than the males. Judge Duffy found that "The layoffs now proposed will reduce the number of females on the police force by 73.5 per cent, while only 23.9 per cent of the males will be discharged."

Plaintiffs' complaint alleges that the facially neutral seniority system of section 80 actually perpetuated the past discriminatory hiring policies of the Police Department. For this reason, the layoffs violated plaintiffs' statutory rights under Title VII and their constitutional rights under the equal protection and due process clauses of the fourteenth amendment. In a brief memorandum opinion, Judge Duffy held, in effect, that defendants could not have acted illegally in following the mandate of section 80, which was a bona fide seniority system. In support of this conclusion, the judge cited two recent circuit court rulings,[2] which relied heavily on the exception in section 703(h) of Title VII, 42 U.S.C. § 2000e-2(h), for an employer applying "different terms, conditions, or privileges of employment pursuant to a bona fide seniority . . . system."[3] The judge also held that granting plaintiffs relief would constitute preferential treatment on the basis of sex, thus violating section 703(j) of Title VII, 42 U.S.C. § 2000e-2(j).[4]

II

Appellants claim that the district court erred in various respects, both procedural and substantive. As to the former, appellants argue that the complaint should not have been dismissed on a motion for a preliminary injunction and that they should have been allowed to amend the complaint to clarify that they were the actual victims of prior discrimination. See Watkins v. United Steel Workers of America, Local 2369, 516 F.2d 41 (5th Cir. 1975). On the substantive issues, plaintiffs' principal claim is that the grossly disproportionate layoff of women under section 80 violated Title VII, despite section 703(h). ~~and as already indicated their constitutional rights as well~~

We turn to the procedural issues first. Judge Duffy dismissed the action on the merits although defendants had made no motion for such relief. Perhaps the judge regarded the hearing before him, at which no evidence was taken, as a consolidation of the hearing on plaintiffs' motion for a preliminary injunction with a trial on the merits, pursuant to Fed. R. Civ. P. 65(a)(2). If so, the failure to give plaintiffs notification of consolidation was improper, Johnson v.

White, slip op. 769, 773 (2d Cir. Nov. 28, 1975), and the was prejudicial, not harmless. See 7 Moore, Federal Practice ¶ 65.04[4]. Defendants argue that the judge's action was justified because the complaint failed to state a cause of action and could not state one, even if amended, since layoffs under section 80, see note 1 supra, could not be unlawful. To the substantive issues raised by this argument we now turn.

After the job gains by minorities in the decade since enactment of Title VII, the recent downturn in the national economy has produced a disproportionately adverse effect on minority group employment. One significant cause has undoubtedly been the common use of the last-hired, first-fired seniority concept embodied in section 80. In the last few years, there have been many suits challenging ~~such layoffs~~ use of such seniority systems on the ground that they violated Title VII or the Constitution. Courts have reached conflicting results,[5] and the issue is involved in a case presently pending before the Supreme Court. See Franks v. Bowman Transp. Co., 495 F.2d 398 (5th Cir. 1974), cert. granted, 419 U.S. 1050 (1975), argued Nov. 3, 1975, 44 U.S.L.W. 3273. We believe that the proper resolution of the controversy before us is indicated by two prior decisions in this circuit, the latter of which was too recent for Judge Duffy to take into account.

The critical issue in this litigation -- and in most of the cases listed in note 5 supra -- is whether a facially neutral seniority system used to select the employees laid off is necessarily insulated from attack by section 703(h), quoted in note 3 supra. In United States v. Bethlehem Steel Corp., 446 F.2d 652 (2d Cir. 1971), we faced the same question in a somewhat different context. In that case, the United States charged that Bethlehem, ~~Steel~~, with the acquiescence of various unions, had discriminated for decades in the hiring and job assignment of blacks at its steel plant in upstate New York. As a result, the comparatively few blacks who were hired were usually shunted off to 11 departments containing the lower-paid and more unpleasant jobs. The seniority system in effect was, for the most part, departmental rather than plant-wide. Transfers were discouraged because a transferring employee lost the seniority and other benefits he had enjoyed in his former department. Bethlehem argued to the district judge that the seniority and transfer provisions were typical of the steel industry, were necessary for safety and efficiency, and had not been instituted or continued for discriminatory reasons. Chief Judge Henderson rejected these contentions, and we affirmed, holding that:

> The pervasiveness and longevity of the overt discriminatory hiring and job assignment practices, admitted by Bethlehem and the unions, compel the conclusion that the present seniority and transfer provisions were based on past discriminatory classifications. . . . Accordingly, Chief Judge Henderson's conclusions that the continued use of the seniority and transfer provisions perpetuated discrimination and therefore violated the Act were surely correct.

446 F.2d at 659.

However, although the district judge ordered transfer priority for employees in the 11 segregated departments, he did not grant the Government all the relief it had sought. The judge refused to order that transferees from the 11 departments should lose no pay and should be able to use their plant-wide seniority for all purposes in their new department. On these issues, we reversed the district judge. We specifically rejected the argument that section 703(h) prevented "any alteration of seniority rights." 446 F.2d at 661-62. Among the reasons for our conclusion were that section 703(h) applies by its terms only to a "bona fide" seniority system, which Bethlehem's was not, and that we agreed with Judge Butzner in Quarles v. Philip Morris, Inc., 279 F. Supp. 505, 516 (E.D. Va. 1968), that "Congress did not intend to freeze an entire generation of Negro employees into discriminatory patterns that existed before the Act."

Several aspects of the Bethlehem Steel decision are significant for this appeal. That the practices under attack were administered through a facially neutral seniority system did not protect the defendants from a finding that Title VII had been violated. Indeed, the operation of that system was altered because of its discriminatory effect. Further, as the EEOC points out in its amicus brief, Bethlehem's seniority list rankings resulted from pre-1965 discrimination that was lawful, however reprehensible it may have been.[6] Nevertheless, we ordered the seniority ranking to be changed, according to plant-wide rather than departmental seniority. Finally, we required Bethlehem and the unions to grant to individual blacks, who had been shown to have suffered discrimination since the date of their hire, greater seniority than they had under the existing rules at the plant.

Having noted all of this, we must immediately state that Bethlehem Steel does not directly control this case. The relief sought by appellants here is seniority credit not from the date of their appointment as police officers -- they already have that -- but from the date they would have been appointed had defendants not discriminated against women. This goes further than the relief ordered by our decision in Bethlehem Steel. Indeed, as appellees point out,[7] we took pains in Bethlehem Steel to refer to a memorandum of Senators Clark and Case, co-floor managers of the bill which ultimately became Title VII, upon which appellees here rely. We noted:

> That memorandum, however, in focussing on formerly white-only plants, seems to say at most that the seniority of a white on (a) job will not be affected by the claims of blacks hired after he was. As we make clear below in discussing the precise relief to which we believe the Government is entitled, the discriminatorily assigned employees who transfer will not receive "special seniority rights" or "super-seniority." Their seniority rights will be no greater than that accorded more fortunate employees. Both groups will bid against each other for vacancies on the basis of plant-wide seniority; an earlier-hired white employee will have greater seniority than a later-hired black.

446 F.2d at 661. Precisely what we did not do in Bethlehem Steel, appellees emphasize, is what plaintiffs desire here. That is, if plaintiffs are successful, an "earlier-hired" male employee will not "have greater seniority than a later-hired" female. Appellees are ~~of course,~~ correct that in Bethlehem Steel we did not require that "seniority" prior to the date of first hire be recognized. Significantly, in Bethlehem Steel, we did not face that issue because the Government, as we also took pains to point out, did not ask us to go that far in remedying the past discrimination. 446 F.2d at 659.

More recently, in Chance v. ~~The~~ Board of Examiners (Chance IV), slip op. 6587 (2d Cir. Jan. 19, 1976), we did reach that question. Plaintiffs in that case, which has had a long history in this court, sued under 42 U.S.C. §§ 1981, 1983, not under Title VII. Late in the litigation, the district court had to deal with problems arising out of the need of the New York City Board of Education to lay off some supervisory personnel, euphemistically referred to as "excessing." As the prior *Chance* decisions make clear,[8] many minority group supervisors had been appointed only recently because prior testing procedures had been discriminatory. In order to protect these gains, the district judge ordered the layoffs to be accomplished by means of a "racial quota concept," which had the "inevitable consequence" that "if racial quotas prevent the excessing of a Black or Puerto Rican, a white person with greater seniority must be excessed in his place." Slip op. 6592. The majority, Judge Oakes dissenting, focussed primarily on the racial quota and held it improper. Significantly for us, however, the court noted the following:

> *The relief fashioned by the court below was not designed to benefit only those affected by the employer's prior discriminatory conduct*[6] or to insure that the excessing program operated in a nondiscriminatory manner. It was intended to insure that there would continue to be a specified quota of Blacks and Puerto Ricans employed in the New York City school system.
>
> 6. Plaintiffs concede that only a small percentage of the minority supervisors appointed since the inception of this litigation failed the examinations found to be discriminatory, and there is no showing as to how many were even eligible to take such examinations.
>
> * * *
>
> To require a senior, experienced white member of such a group to stand aside and forego the seniority benefits guaranteed him by the New York Education Law and his union contract, *solely* because a younger, less experienced member is Black or Puerto Rican is constitutionally forbidden reverse discrimination. . . .

> *If a minority worker has been kept from his rightful place on the seniority list by his inability to pass a discriminatory examination, he may, in some instances, be entitled to preferential treatment -- not because he is Black, but because, and only to the extent that, he has been discriminated against.* The "freedom now" and "rightful place" doctrines create constructive or fictional seniority to put minority employees in the approximate spot on the seniority list that they would have occupied had they not been the subject of discrimination. *Local 189, United Papermakers v. United States*, *supra*, 416 F.2d at 988. The former contemplates the displacement of white workers where necessary; the latter involves only the filling of vacancies. We have followed the "rightful place" doctrine to the extent of using plant seniority, instead of departmental seniority, where departmental discrimination has prevented or delayed the transfer of minority workers. *United States v. Bethlehem Steel Corp.*, 446 F.2d 652 (2d Cir. 1971).
>
> There is disagreement among the Circuits as to how far these concepts should be carried in creating fictional dates of employment for minority workers. *Cf.* *Franks* v. *Bowman Transportation Co.*, 495 F.2d 398 (5th Cir. 1974), *cert. granted*, 419 U.S. 1050 (1975), *argued* November 3, 1975, 44 U.S.L.W. 3273; *Meadows* v. *Ford Motor Company*, 510 F.2d 939 (6th Cir. 1975). Upon remand of this case, the District Court may find it unnecessary to await resolution of this dispute by the Supreme Court. *The defendant Board of Education has indicated its willingness to accord constructive seniority to any minority supervisor who failed an examination since invalidated as discriminatory by giving him a date of appointment which is the mean appointment date of those who passed the examination.* *We believe this offer of compromise which appears to be acceptable to the intervening Union should have been adopted by the District Court.* [Emphasis added; some footnotes omitted.]

Slip op. 6595, 6596-97.

We regard this language -- particularly the emphasized portion -- as instructive on the issues before us. What the court in Chance IV would not approve was "[t]o require a senior, experienced white [supervisor] to stand aside and forego the seniority benefits guaranteed him . . . solely because a younger, less experienced member is Black or Puerto Rican." The meaning of "solely" in this sentence is clarified by the reference to the concededly "small percentage of the minority supervisors appointed since the inception of this litigation" who had failed the discriminatory examinations. Relief for this small group would not be "solely" because they were black; nor would it be a "non-remedial distortion of a seniority system through preferential treatment based solely upon race . . . .". Slip op. 6594. Chance IV indicates that retroactive "constructive" seniority, even prior to the date of appointment, might be appropriate relief for any identifiable minority group supervisor who had taken a discriminatory examination and failed. It is for this reason that the majority stated that a compromise embodying precisely that concept "should have been adopted by the District Court."[9]

Such constructive seniority back to the date when they would have been hired had there been no discrimination is the relief sought by the laid-off ~~police~~women here, at least in their amended complaint. We believe that Bethlehem Steel and Chance IV both indicate that plaintiffs are entitled to that relief if they can prove their case under conditions discussed below. Moreover, we do not ~~rest~~ rely merely upon the ~~ground of the~~ radiations of ~~prior precedents~~ these two decisions. Even if the slate were clean, we would reach the same results for reasons which, in view of our prior precedents, we set forth more briefly than we might otherwise.

If a female police officer can show that, except for her sex, she would have been hired early enough to accumulate sufficient seniority to withstand the current layoffs, then her layoff violates section 703(a)(1) of Title VII, 42 U.S.C. § 2000e-2(a)(1), since it is based on sexual discrimination. Defendants argue that recognizing such constructive seniority violates 703(h) and point particularly to the Clark-Case Memorandum cited in Bethlehem Steel, supra. We do not agree. The legislative history of that section is sufficiently cloudy to warrant looking at Title VII's purposes and policies in interpreting section 703(h), rather than just at the Clark-Case Memorandum. See Note, Last Hired, First Fired Seniority," 11 Colum. J. of L. and Social Problems 343, 369-71 (1975); Cooper and Sobol, supra note 5, at 1607-14. With those general purposes in mind -- particularly the congressional intention in amending Title VII in 1972 "to give the courts wide discretion exercising their equitable powers to fashion the most complete relief possible" and to restore aggrieved persons "to a position where they would have been if not for the unlawful discrimination"[10] -- we believe that the relief plaintiffs seek would prevent the perpetuation of the effects of past discrimination as to them. See Albemarle Paper Co. v. Moody, 422 U.S. 405, 413-25 (1975). See also Watkins, 516 F.2d at 45.

Our own decision in Bethlehem Steel, supra, and the many in other circuits holding discriminatory facially neutral departmental or job seniority[11] lend further support for our view. In determining the effect of section 703(h) as an exception to liability under the Act, we see no sufficient basis for distinguishing between facially neutral departmental and plant-wide seniority systems. Under certain circumstances, either can for the purposes of Title VII lose the protection of being "bona fide" under section 703(h). Indeed, the very circuit court of appeals that apparently originated the distinction in dictum[12] has recently been careful to note that it may not apply to plaintiffs like these.[13] Moreover, in this case, unlike such departmental seniority cases as Bethlehem Steel, we are not invalidating or altering portions of the seniority system at all. We are merely putting plaintiffs in their rightful place in it. Until the past discrimination against these particular plaintiffs is remedied by according them the seniority position to which they are entitled, the system cannot be considered "bona fide" and in fact represents a continuation of past intentionally discriminatory practices, and thus falls outside the terms of section 703(h). Also, there is an element of "fictional," or constructive, seniority in the relief granted in the departmental seniority cases. Plant-wide seniority was used in Bethlehem Steel not because it was earned but because it was "a convenient approximation of what the black employees' departmental seniority would have been absent discrimination in the past." Harvard Note, supra note 5, at 1556. It may be that the distinction between seniority from date of hire and earlier, constructive seniority seems attractive because of the unstated moral premise that it is wrong to give seniority credit to one who did not work for it. Harvard Note, at 1555. But the limited number of employees who might get such seniority here were prevented by defendants' wrongdoing from attaining it before. Moreover, as Chief Judge Kaufman notes in his concurring opinion, plaintiffs here have in this respect a more compelling claim to relief than plaintiffs in Bethlehem Steel. Plaintiffs here were not merely relegated to inferior jobs, but were denied employment altogether for discriminatory reasons. Finally, in analogous situations arising under the National Labor Relations Act, employers are required "to credit all [discriminated-against] employees with such seniority and other rights and privileges that would have accrued to them as of the dates they would have been hired, absent the discrimination against them." Atlantic Maintenance Co., 134 NLRB 1328, 1336 (1961), enf'd, 305 F.2d 604 (3d Cir. 1962). See also Consolidated Dairy Products, 194 NLRB 701 (1971). Cf. also Tilton v. Missouri Pac. R.R., 376 U.S. 169 (1964) (awarding back seniority to veterans under the former 50 U.S.C. App. § 469(b), now 38 U.S.C. § 2021(a)).

~~[illegible]~~

In short, we believe that the district court erred in apparently concluding that because of section 703(h) layoffs under the facially neutral formula of section 80 of the New York Civil Service Law could not violate Title VII. We disagree as well with the ~~district court~~ holding that retroactive seniority would necessarily violate section 703(j). See note 4 supra. Award of seniority to those who had actually been discriminated against by these defendants is not a "preference" because of sex. It is rather a remedial device well within the broad power conferred on the district court by section 706(g). 42 U.S.C. § 2000e-5(g).[14]

III

The case must, therefore, be remanded to the district court for further proceedings consistent with this opinion.[15] The record at this point is sparse and it is not clear which facts are admitted and which are contested. The layoffs have already taken place and plaintiffs have indicated that they are flexible as to the relief they now seek, including "placement of appellants at the top of the recall list."[16] The district court should expeditiously determine -- either by stipulation or after a hearing -- which plaintiffs/now laid off would have been hired early enough to obtain sufficient seniority to avoid layoff had it not been for defendants' discriminatory hiring practices. This limited group will be composed only of those plaintiffs who themselves were the victims of discrimination by the defendants.

For guidance of the district court, we suggest that the burden of satisfying the court on this issue by a preponderance of the evidence should be on the individual plaintiffs. The female police officer might, for example, satisfy her burden by demonstrating that she actually filed an application for employment or wrote a letter complaining about the hiring policy early enough during the period of discrimination, or offer proof that she had expressed a desire to enlist in the police force but was deterred by the discriminatory practice barring females. Relief will, of course, be limited to persons who eventually were accepted as police officers, so there is no question about their qualifications for the job. We emphasize that we are not deciding the appropriate relief to which those plaintiffs who can satisfy the above conditions are entitled. That is a matter, in the first instance, for the district court with due regard to the necessity of minimizing disruption in the operation of the Police Department. We decide only that the layoffs here under section 80 of the Civil Service Law were not insulated from attack by sections 703(h) or 703(j) of Title VII, and that those plaintiffs who can show that their lack of seniority is the result of past discrimination by defendants are entitled to relief.

Reversed and remanded for further proceedings consistent with this opinion.

FOOTNOTES

1. Section 80 provides:

> 1. Suspension or demotion. Where, because of economy, consolidation or abolition of functions, curtailment of activities or otherwise, positions in the competitive class are abolished or reduced in rank or salary grade, suspension or demotion, as the case may be, among incumbents holding the same or similar positions shall be made in the inverse order of original appointments on a permanent basis in the classified service in the service of the governmental jurisdiction in which such abolition or reduction of positions occurs, subject to the provisions of subdivision seven of section eighty-five of this chapter [granting special preferences to the blind and veterans] . . . .

2. Jersey Central Power and Light Co. v. Local Union 327, 508 F.2d 687 (3d Cir. 1975), pets. for cert. filed, 44 U.S.L.W. 3084 (U.S. Aug. 1, 1975), 44 U.S.L.W. 3207 (U.S. Sept. 24, 1975), and Waters v. Wisconsin Steel Works, 502 F.2d 1309 (7th Cir. 1974), pet. for cert. filed, 44 U.S.L.W. 3011 (U.S. Apr. 25,1975).

3. This section provides:

> Notwithstanding any other provisions of [Title VII],it shall not be an unlawful employment practice for an employer to apply different standards of compensation, or different terms, conditions, or privileges of employment pursuant to a bona fide seniority or merit system . . . , provided that such differences are not the result of an intention to discriminate because of . . . sex . . . .

4. This section provides:

> Nothing contained in [Title VII] shall be interpreted to require any employer . . . to grant preferential treatment to any individual or to any group because of the . . . sex . . . of such individual or group on account of an imbalance which may exist with respect to the total number or percentage of persons of any . . .sex . . . employed by any employer . . . in comparison with the total number of percentage of persons of such . . . sex . . . in any community . . . .

5. See, e.g., Watkins v. United Steel Workers of America, Local 2369, 516 F.2d 41 (5th Cir. 1975); Meadows v. Ford Motor Co., 510 F.2d 939 (6th Cir. 1975), pet. for cert. filed, 43 U.S.L.W. 3594 (U.S. May 6, 1975); Jersey Central Power and Light Co. v. Local Union 327, supra note 2; Waters v. Wisconsin Steel Works, supra note 2; Schaefer v. Tannian, 394 F. Supp. 1136 (E.D. Mich. 1975). See also Cooper and Sobol, Seniority and Testing Under Fair Employment Laws: A General Approach to Objective Criteria of Hiring and Promotion, 82 Harv. L. Rev. 1598 (1969); Note, Last Hired, First Fired Layoffs and Title VII, 88 Harv. L. Rev. 1544 (1975) ("Harvard Note").

6. EEOC brief, 29 n.16.

7. Appellees' brief, 19-20.

8. See Chance v. Board of Examiners, 458 F.2d 1167 (2d Cir. 1972); Chance v. Board of Examiners, 496 F.2d 820 (2d Cir. 1974); Chance v. Board of Examiners, 497 F.2d 919 (2d Cir. 1974).

9. On this issue, the dissent agreed with the majority. Slip op. 6609-10. The thrust of the dissenting opinion was that not enough relief was being granted to remedy the past discrimination.

10. Equal Employment Opportunity Act of 1972 -- Conference Report, 118 Cong. Rec. 7166, at 7168 (1972).

11. See, e.g., Pettway v. American Cast Iron Pipe Co., 494 F.2d 211 (5th Cir. 1974); Bing v. Roadway Express, 485 F.2d 441 (5th Cir. 1973); United States v. N.L. Industries, 479 F.2d 354 (8th Cir. 1973); United States v. Chesapeake & O. Ry., 471 F.2d 582 (4th Cir. 1972), cert. denied sub nom. Locals 268 and 1130 of Bhd of R.R. Trainmen v. United States, 411 U.S. 939 (1973); United States v. Hayes Int'l Corp., 456 F.2d 112 (5th Cir. 1972); United States v. Jacksonville Terminal Co., 451 F.2d 418 (5th Cir. 1971); Robinson v. Lorillard Corp., 444 F.2d 791 (4th Cir.), cert. dismissed, 404 U.S. 1006 (1971); Local 189, United Papermakers & Paperworkers v. United States, 416 F.2d 980 (5th Cir. 1969), cert. denied, 397 U.S. 919 (1970); Quarles v. Philip Morris, Inc., 279 F. Supp. 505 (E.D. Va. 1968).

12. Local 189, United Papermakers & Paperworkers v. United States, supra note 11, 416 F.2d at 995.

13. Watkins v. United Steel Workers of America, Local No. 2369, supra note 5, 516 F.2d at 47-48.

14. This section provides:

> If the court finds that the respondent has intentionally engaged in or is intentionally engaged in an unlawful employment practice charged in the complaint, the court may enjoin the respondent from engaging in such unlawful employment practice, and order such affirmative action as may be appropriate, which may include, but is not limited to, reinstatement or hiring of employees with or without back pay . . ., or any other equitable relief as the court deems appropriate. . . .

15. On this disposition, it is unnecessary to deal with plaintiffs' claims under 42 U.S.C. § 1983 or their argument that the illegality of defendants' hiring policies prior to Title VII is a controlling consideration in applying § 703(h).

16. Plaintiffs' brief, 37-38.

KAUFMAN, Chief Judge (concurring):

I fully concur in Judge Feinberg's well-reasoned opinion, and would merely offer a few additional observations in order to avoid any misconstruction of our holding.

One principle is clear to me. We do not, by our holding today, seek to disparage the wide range of benefits that may flow from a properly functioning seniority system. A "last-hired, first-fired" plan appropriately provides longer-employed individuals with a substantial measure of freedom from fear of unemployment. It, therefore, enables them to engage in meaningful long-range personal planning while simultaneously inducing a degree of peace of mind that may enhance their productivity on the job. And, by rewarding the worker who avoids frequent job changes, it may have an impact on the economy itself, by reducing duplicative hiring and training costs, and, of course, it properly benefits the individual employer. The apparent neutrality and fairness of the procedure tends to promote labor peace and, indeed, prohibits the employer from discriminatorily discharging certain individuals because of race or sex.

Accordingly, it is important to emphasize that our holding is in no way intended to alter or compromise the underlying structure of the seniority system established by §80 of the New York Civil Service Law. It merely represents a refusal to allow a system intended as a safeguard against arbitrariness to become a device for perpetuating past caprice. Nor does our decision sanction the use of preferential treatment or reverse discrimination to achieve this end. The standard we have established restricts relief to those who have already demonstrated their qualifications for the position of police officer and can prove that they were improperly deprived of their rightful place in the seniority hierarchy. The maximum remedy authorized by our decision for those plaintiffs who satisfy their burden of proof, under the circumstances present here, is nothing more than to be restored to parity with the male police officers hired at the time these female police officers were discriminatorily denied employment. The only special advantages implicated by our holding are those improperly received by some male police officers, whose location high on the seniority list resulted from unfair discrimination at the expense of equally or more qualified females. Such unjust preferential treatment should be corrected and eradicated.

Of course, to require mathematical certainty of proof would be to render the rights we confer impossible to vindicate in practice. Perhaps two examples will illuminate the results we anticipate. The June 30, 1975 layoffs applied, it appears, only to officers hired after March, 1969. If so, relief should be available to an individual who proves she took the 1964 examination for "policewoman," achieved a score on that examination that, were she a man, would have assured her employment, but nevertheless was not appointed until 1970 solely because of the low quota for women prevailing in the Police Department in 1964. This person satisfies the burden of proving that she would have had sufficient seniority to withstand the

§80 layoff but for the discrimination in 1964. Such a showing would not, however, be possible for a female who became a police officer upon reaching the minimum hiring age for police officers in 1973 (assuming, as we do, that all officers hired after 1969 must be laid off under the §80 formula).

It is conceivable that the standard of proof we require may be difficult or impossible to meet for some female police officers who took no overt action with regard to employment in the Police Department during the years in which discrimination in hiring prevailed. Nor would it be appropriate to interpret our holding as stating that some female officers will be put into a favored position to claim that relief must be automatic even though they cannot establish that the prior discrimination in any way deterred them from, or interfered with their quest for, employment in the Police Department. The proof required should not pose a problem in the future, however, in view of the notice our opinion provides to all. Moreover, because of the male police officers' important countervailing interest, we believe it inappropriate to establish a special or double standard for the plaintiffs before us, even though they obviously had no notice, at the time they suffered discrimination, of the requirements we now impose.

We entertain no doubts that those who do meet the standard of proof here established have a right to be positioned within the seniority system as if they had been hired at a time earlier than they actually were. As Judge Feinberg emphasized, this Court and others have provided remedies under Title VII for minority employees who hired but discriminatorily relegated to less desirable departments within a company -- and then disadvantaged by facially neutral departmental seniority systems. Surely, it would be incongruous to deny relief to those who were not simply restricted to less attractive jobs, but indeed were discriminatorily refused any employment at all.

Answer

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

GERALDINE L. ACHA and ARLENE M. EGAN,
each individually and on behalf of all
others similarly situated,

Plaintiffs,

v.

ABRAHAM D. BEAME, individually and in
his capacity as Mayor of the City of
New York, MICHAEL J. CODD, individually
and in his capacity as Police Commis-
sioner of the New York City Police
Department and THE CITY OF NEW YORK,
as a public employer,

Defendants.

ANSWER

75 Civ. 3128

Defendants, answering the complaint herein by their attorney, W. BERNARD RICHLAND, Corporation Counsel, respectfully allege as follows:

1. Deny each and every allegation set forth in paragraph "4" of the complaint except admit that this action purports to bring the within lawsuit on behalf of the named plaintiffs and all other female police officers similarly situated pursuant to Federal Rules of Civil Procedure 23(a) and 23(b)(2).

2. Deny each and every allegation set forth in paragraphs "6", "7" and "8" of the complaint insofar as the decision of the Court of Appeals for the Second Circuit dated February 19, 1976 places the burden of proof on the individual plaintiff.

3. Admit the allegations in paragraphs "9A" and "9B" of the complaint except deny knowledge and information sufficient to form a belief as to the allegation that plaintiff Acha earns the same amount of her husband or that she is the sole supporter of her son. Further, deny knowledge

and information sufficient to form a belief as to the allegation that plaintiff Egan is divorced and has custody of her son, who she supports, or that her salary is her only source of income.

4. Deny each and every allegation set forth in paragraph "11" of the complaint insofar as the figures of the police officers that were to be laid off and affirmatively state that by June 30, 1975, 5,034 police officers had been terminated included within which were 399 female police officers.

5. Admit the allegations in paragraph "13" of the complaint except deny each and every allegation wherein it states that the quota was not lifted until February 1973.

6. Deny each and every allegation set forth in paragraphs "21" and "22" of the complaint.

7. Deny knowledge and information sufficient to form a belief as to the allegations set forth in paragraph "25" of the complaint.

8. Deny each and every allegation set forth in paragraph "28(a)" of the complaint except admit that the termination will have the effect on a percentage basis of laying-off a greater number of female police officers than male police officers. Deny knowledge and information sufficient to form a belief as to the allegation that in many cases the lay-offswill cause the loss of the sole source of income for female police officers.

9. Deny each and every allegation set forth in paragraph "28(b)" of the complaint except admit that Chart #1 reflects the number of female police officers and the approximate size of the uniformed force as of December 28, 1972.

10. Deny each and every allegation set forth in paragraph "29" of the complaint.

11. Deny each and every allegation set forth in paragraph "30" of the complaint except admit that plaintiffs filed complaints with the New York City Commission on Human Rights and the United States Equal Employment Opportunity Commission which in substance, fact and law sets forth claims as those in the complaint.

12. Deny knowledge and information sufficient to form a belief as to the allegation set forth in paragraph "31" of the complaint.

13. Deny each and every allegation set forth in paragraphs "32" and "33" of the complaint.

FIRST DEFENSE

14. Plaintiffs' individual claims under Title VII of the Civil Rights Act of 1964 and 42 U.S.C. §1983 are barred by the Statute of Limitations.

SECOND DEFENSE

15. Plaintiffs' individual claims under Title VII of the Civil Rights Act of 1964 and 42 U.S.C. §1983 are stale and therefore barred by the equitable defense of laches.

WHEREFORE, defendants respectfully request judgment dismissing the complaint, together with the costs and disbursements of this action, and such other and further relief as the Court deems just and proper.

Dated: New York, N.Y.
April , 1976

W. BERNARD RICHLAND
Corporation Counsel
Attorney for Defendants
Municipal Building
New York, New York 10007

By: Gregory D. Frost
GREGORY D. FROST
Assistant Corporation Counsel

Amended Complaint

UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF NEW YORK
--X

BERALDINE L. ACHA and ARLENE M. EGAN,
each individually and on behalf of all
others similarly situated,

Plaintiffs,

-against-

ABRAHAM D. BEAME, individually and in
his capacity as Mayor of the City of
New York, MICHAEL J. CODD, individually
and in his capacity as Police Commissioner of the New York City Police
Department, and THE CITY OF NEW YORK, as
a public employer,

Defendants.

--X

AMENDED COMPLAINT

CLASS ACTION
75 Civ. 3128
K.T.D.

Preliminary Statement

1. This is a class action for declaratory, injunctive, and monetary relief pursuant to 28 U.S.C. §2201 and §2202, 42 U.S.C. §1983, and Title VII of the Civil Rights Act of 1964, 42 U.S.C. §2000e through §2000e-17 to protect and compensate plaintiffs herein and the class which they represent from and for deprivation of certain rights, privileges and immunities secured by the Due Process and Equal Protection Clauses of the Fourteenth Amendment of the United States Constitution. Injunctive relief is sought to enjoin defendants from retaining on a laid-off status, refusing to rehire, and denying rightful seniority to any females employed in the title of Police Officer by the New York City Police Department ("PD") prior to July 1, 1975, and laid-off

on or after June 30, 1975 solely for budgetary reasons. Declaratory judgment is sought declaring that the actions of the defendants in terminating the employment of such female Police Officers ("FPOs") employed by the PD and denying them their rightful seniority are unconstitutional, illegal, and void as applied to plaintiffs and all other similarly situated FPOs. Monetary relief is sought to compensate plaintiffs and each member of the class which they represent to full compensation, past and future, for any loss, injury, or damage they did or will incur or sustain by reason of the aforesaid actions of the defendants, together with counsel fees and the costs of this action.

Jurisdiction

2. Jurisdiction is conferred upon this Court by 28 U.S.C. §1343(3) and §1343(4), providing for jurisdiction in this Court for an action to redress the deprivation, under color of state law, of rights, privileges and immunities guaranteed by the Constitution of the United States and to secure injunctive, declaratory, and monetary relief, together with counsel fees and the costs of this action, authorized by 28 U.S.C. §2201, and 42 U.S.C. §1983, §2000e-5(g) and §2000e-5(k). This is an action seeking redress for the deprivation of the constitutional and civil rights of plaintiffs named herein and all others similarly situated, as secured under and guaranteed by the Fourteenth Amendment to the Constitution of the United States and under 42 U.S.C. §1983 and Title VII of the Civil Rights Act of 1964, 42 U.S.C. §2000e through §2000e-17.

3. This Court is authorized by 28 U.S.C. §2201, and 42 U.S.C. §1983, §2000e-5(g), and §2000e-5(k) to grant the relief herein requested.

Class Action Allegations

4. Plaintiffs bring this action, on behalf of themselves and all other FPOs similarly situated, as a class action pursuant to Rules 23(a) and 23(b)(2) of the Federal Rules of Civil Procedure. The plaintiffs are members of a class containing approximately 400 members, which class is so numerous as to make joinder impracticable, composed of FPOs whose employment with the PD was terminated on or after June 30, 1975 solely for budgetary reasons.

5. Each plaintiff and member of the class is an adult female citizen of the United States who, prior to June 30, 1975, held a permanent appointment in the classified civil service of the City of New York and was at such time employed by the defendants in the title of Police Officer in the PD.

6. The plaintiffs named herein will fairly and adequately protect the interests of the class in that their mutual and separate claims are typical of the individual claims of the members of the class, there are no conflicts of interest among the members of the class, and there are questions of law and fact common to the class.

7. Final injunctive, declaratory, and monetary relief with respect to the class as a whole is appropriate in that

defendants acted and are acting on grounds, challenged by plaintiffs named herein, generally applicable to the class.

8. The defendants have acted and propose to act on grounds generally applicable to the class, thereby making appropriate final injunctive, declaratory, and monetary relief with respect to the class as a whole; to wit, they have terminated the employment of the plaintiffs with the PD on and after June 30, 1975.

Parties

9. The plaintiffs in the action are:

A. Beraldine L. Acha, who resides at 10 Waterside Plaza, New York, New York 10010, was a Police Officer with the PD and served in that capacity from May 29, 1973 until June 30, 1975. She is married and earns the same amount of money as her husband, approximately $13,000 a year. Beraldine L. Acha provides the sole support for her 9 year old son by a previous marriage, of whom she has custody. She received notice on June 24, 1975 that her employment with the PD would be terminated on June 30, 1975, and her employment was terminated on that date solely for budgetary reasons.

B. Arlene M. Egan, who resides at 80-20 249 Street, Bellerose, New York 11426, was a Police Officer with the PD and served in that capacity from June 25, 1973 until June 30, 1975. She is divorced and has custody of her 14 year old son, whom she supports. Her salary of approximately $13,000, prior to her layoff, was her sole source of income. Her employment was terminated on June 30, 1975, solely for budgetary reasons.

10. The defendants in the action are:

A. Abraham D Beame, individually and in his capacity as Mayor of the City of New York.

B. Michael J. Codd, individually and in his capacity as Commissioner of the PD.

C. The City of New York ("the City") a municipal corporation duly incorporated under the laws of the State of New York, and the public employer of plaintiffs and each member of the class.

Factual Allegations

11. Commencing on or about May 21, 1975, 399 FPOs, including plaintiffs and members of the class herein, were notified that their services with the PD were to be terminated on June 30, 1975. A copy of the notice served on plaintiff Arlene M. Egan, which is identical in substance with each such notice served on the plaintiffs and all of the members of their class, is annexed hereto as Exhibit "A". Neither plaintiff has been reinstated. On June 30, 1975, approximately 5,034 Police Officers in the PD were terminated solely for budgetary reasons. This number included approximately 399 FPOs together with the plaintiffs who have not been reinstated, and whose names have since the above date remained on the list of former Police Officers entitled to reinstatement ("the preferred list"), which is based upon the order of seniority.

12. As of June 30, 1975, there were 30,374 members in the PD uniformed force. Of these 21,669 were males and 618 females in the rank and title of Police Officer. A total of 724

women were employed in the PD uniformed force.

13. At all material and relevant times herein prior to February 1973, a quota was fixed and maintained by the PD and the responsible fiscal agencies of the City for the number of women employed in the PD uniformed forces. As of January 1973 the quota was fixed at 354 women to be employed in toto in the PD uniformed forces and 223 women in the title of Policewoman.

14. Prior to 1973 women in the PD uniformed forces served in the title of Policewoman and men served in the title of Patrolman. In 1973 the two titles were merged into the title of Police Officer.

15. Prior to 1973 the vast majority of women appointed to the PD uniformed forces were initially assigned to the Bureau of Policewomen, whereas men were assigned to precincts throughout the City.

16. Prior to 1969 different examinations were given for the position of Policewoman and Patrolman. An examination for the position of Policewoman was given in 1964 and another one in 1969. Examinations for the position of Policewoman were given approximately every four years. During the same period of time, approximately eighteen examinations were given for the position of Patrolman and/or Police Trainee. Women were not eligible or permitted to take any of the aforesaid examinations for, or appointed to the positions of Patrolman and/or Police Trainee.

17. In 1969 two examinations were given: No. 9080 for the title of Police Trainee/Patrolman; and No. 9081 for the

title of Policewoman. Copies of the notices for examinations 9080 and 9081 are attached as Exhibits "B" and "C", respectively.

18. Although examinations 9080 and 9081 were announced and the examinations were administered separately, the examination questions on the two were the same and the two examinations were graded in the same fashion. Separate eligible lists were, nevertheless, established as a result of the two examinations, one for Police Trainee/Patrolman which included only males, and the other for Policewoman which included only female candidates.

19. Examination 9080 was open only to men who were at least 16 years of age on the date of the written examination. A male candidate on examination 9080 between the ages of 17 and 21 when reached for appointment could be appointed as a Police Trainee and would be appointed as a Patrolman when he thereafter attained age 21. On the other hand, examination 9081 for the position of Policewoman required that the female candidate be not less than 19 years of age on the date of the examination, and not less than 21 at the date of appointment. There was no Police Trainee position made available to women.

20. There was a job freeze on hiring by the PD in effect from approximately 1970 to January 1973. During this period of time there were no appointments made directly to the positions of Patrolman or Policewoman, but males who had passed a previous examination and were at the PD Police Academy in a position of Police Trainee were appointed to the PD. Approximately

125 men who had taken examination 9080 who were elibible for the position of Police Trainee were appointed to that position on May 8, 1970.

21. When the job freeze was lifted in January 1973, it was determined by the then Police Commissioner Patrick J. Murphy that men and women be appointed as Police Officers from separate lists in a ratio of four men to one woman, regardless of comparative grades on examinations. Although all the women appointed to the PD uniformed forces subsequent to January 1973 were appointed from a list established as a result of examination 9081, men were appointed from five different lists.

22. On information and belief, men who had taken the aforesaid 1969 examination 9080 were appointed to the title of Police Officer prior to women who had taken the same 1969 examination 9081 and received higher grades.

23. Since January 1973 approximately 4,236 male Police Officers have been appointed and approximately 513 female Police Officers have been appointed to the PD.

24. In January 1973 the titles of Patrolman and Policewoman were merged into the title of Police Officer. Men and women appointed to the PD uniformed forces subsequent to 1973 underwent the same medical examination and received the same training at the Police Academy.

25. Both plaintiffs Acha and Egan were willing and qualified to take an examination for Policewoman and/or Patrolman

and/or Police Officer and/or Police Trainee subsequent to 1964 and prior to 1969, but no such examination was open to them.

26. If the plaintiffs and each member of the class they represent had had the same opportunities as men to take examinations for and/or to be appointed to the position of Patrolman or Police Officer or Police Trainee in the PD as aforesaid, the plaintiffs and each member of the class they represent would have been appointed to the PD uniformed forces at respective dates earlier than the respective dates at which they were actually appointed.

27. The seniority dates of the plaintiffs and each of the members of their class for all purposes, including but not limited to layoff and reinstatement, were and remain fixed by defendants at the dates of the respective appointments of the plaintiffs and those members and not the dates they would have been appointed but for the lack of opportunity referred to in ¶26 hereof.

28. Under New York Civil Service Law §85, additional credit is allowed to veterans on competitive examinations, and preference in retention in the event of layoffs is allowed to certain veterans who were disabled or who served in "time of war." At all material and relevant times herein, and prior to recent amendment of federal law, men were subject to involuntary draft into the armed services of the United States and women were not; presently neither men or women are subject to involuntary draft.

29. The termination notices sent to plaintiffs and members of their class are purportedly in conformity with the inverse order of original appointment on a permanent basis.

30. Upon information and belief, if the plaintiffs and each of the members of the class they represent had been accorded their rightful seniority based upon the dates they would have been appointed to the PD uniformed forces but for the discriminatory acts of the defendants herein complained of, none of them would have been laid off on June 30, 1975 or at any time thereafter to the date hereof for budgetary reasons.

31. The termination of employment of the plaintiffs and members of their class as aforesaid resulted in a disproportionate impact on the number of women in and employed by the PD. The aforesaid termination resulted in discrimination on the basis of sex, and also resulted, in many cases, to the loss of a sole source of income for plaintiffs and members of their class.

32. The action of defendants herein complained of is facially, patently and statistically discriminatory, to wit:

CHART #1

COMPOSITION OF POLICE DEPARTMENT AS OF DECEMBER 28, 1972

TOTAL UNIFORMED FORCES	# FPOs	% FPOs
25,210 (active)	282 (active)	1.12% (active)
26,414 (quota)	355 (quota)	1.34% (quota)

CHART #2

COMPOSITION OF POLICE DEPARTMENT AS OF JUNE 12, 1975

TOTAL UNIFORMED FORCES	# FPOs	% FPOs
25,936 (active)	680 (active)	2.62% (active)

CHART #3

COMPOSITION OF POLICE DEPARTMENT AS OF JULY 1, 1975

TOTAL UNIFORMED FORCES	# FPOs	# Male POs	% FPOs
20,902	281	20,621	1.36%

CHART #4

APPOINTMENTS TO POLICE OFFICER FROM JANUARY 1973 TO DATE

TOTAL UNIFORMED FORCES	# FPOs	# Male POs	% FPOs
4,769	513	4,246	10.78%

CHART #5

PERCENTILE REDUCTION IN POLICE OFFICERS TOTAL BY SEX

FPOs TERMINATED	FPOs JUNE 30, 1975	% FPOs TERMINATED
399	680	54.6%

MALE POs TERMINATED	MALE POs JUNE 1975	% MALE POs TERMINATED
4,635	25,256	18.35%

33. The resultant loss, damage and injury to the plaintiffs and the members of their class is serious and irreparable for which there is no adequate remedy at law.

34. On or about June 25, 1975, plaintiffs duly filed complaints with the New York City Commission on Human Rights and the United States Equal Employment Opportunity Commission, which in substance, fact and law sets forth claims as those hereinbefore stated. A copy of the complaints duly filed with the New York City Commission on Human Rights is annexed hereto as Exhibit "D". A copy of the complaints duly filed with the United States Equal Employment Opportunity Commission is annexed hereto as Exhibit "E".

Right to sue letters were issued to the plaintiffs by the Department of Justice on April 2, 1976. Copies of these letters are annexed hereto as Exhibit "F".

35. There has been no previous application by the plaintiffs for the relief sought herein.

36. The actions of the defendants in terminating plaintiffs and members of their class, retaining their names on the preferred list, and otherwise fixing and determining their seniority as aforesaid, are all in violation of the Due Process and Equal Protection clauses of the Fourteenth Amendment to the United States Constitution, 42 U.S.C. §1983, and Title VII of the Civil Rights Act of 1974, 42 U.S.C. §2000e through §2000e-17, in that 54.6% of all FPOs, as opposed to only 18.35% of all male POs were terminated, and in that the layoff, reinstatement, and seniority status perpetuated prior invidious discrimination based on sex practiced by the defendants upon the plaintiffs and members of the class they represent. The disparity based on sex in all of the foregoing respects are not justified by any business necessity or any proper or lawful cause. The layoffs and failure to reinstate have resulted in irreparable injury to plaintiffs and members of their class, since they have suffered discrimination based upon sex and many members of the class have lost the ability to support themselves and their families.

Prayer for Relief

WHEREFORE, plaintiffs respectfully pray, on behalf of themselves and all others similarly situated, that this Court:

i) enter a judgment declaring that the termination of the employment of plaintiffs and each member of the class herein by the defendants was in violation of the Due Process and Equal Protection Clauses of the Fourteenth Amendment of the United States Constitution and 42 U.S.C. §1983 and §2000e-2;

ii) order the immediate reinstatement of plaintiffs and all members of the class they represent, with full rights and benefits retroactive to the date of their layoff;

iii) fix and determine for the plaintiffs and each member of the class they represent, their rightful seniority for all purposes;

iv) enjoin, pendente lite and permanently, the defendants, and their servants, agents, officers, and employees, from hiring or otherwise reinstating Police Officers from the preferred list for reinstatement as currently constituted prior to fixing and determining the rightful seniority of the plaintiffs and the members of the class they represent and the revision of the preferred list to reflect such rightful seniority;

v) award plaintiffs and all members of the class they represent, back pay from the date of their termination until the date of their reinstatement;

vi) allow to plaintiffs costs and disbursements as well as reasonable attorneys fees; and

vii) grant such other and further relief as may be proper.

MURRAY A. GORDON, P. C.
Attorneys for Plaintiffs

By: Murray A Gordon
MURRAY A. GORDON
Office & P. O. Address
666 Third Avenue
New York, N. Y. 10017
Tel. 212-661-7900

AFFIDAVIT OF SERVICE

STATE OF NEW YORK)
) SS.:
COUNTY OF NEW YORK)

Hermine Salgo, being duly sworn, deposes and says: deponent is not a party to the action, is over 18 years of age and resides at 41-07 Bowne Street, Flushing, N. Y. 11355. On May 6, 1976 deponent served the within amended complaint on the office of the Corporation Counsel, attorneys for the defendants in this action, at the Municipal Building, New York, New York 10007 the address designated by said attorneys for that purpose by depositing a true copy of same enclosed in a post-paid properly addressed wrapper, in an official depository under the exclusive care and custody of the United States Postal Service within the State of New York.

Hermine Salgo
Hermine Salgo

Sworn to before me
this 6th day of May, 1976

Carolyn B Young.

CAROLYN B. YOUNG
Notary Public, State of New York
No. 31 [illegible]
Qualified in New York County
Commission Expires March [illegible] 77

The City of New York
POLICE DEPARTMENT
[illegible]

A 161

June 20, 1975

Dear Officer Arlene Egan:

Mayor Beame joins me in expressing our profound regret and deep personal concern that the City's fiscal crisis requires us to lose your valuable services at this time. Your termination is effective June 30, 1975.

Your name is being placed on a preferred list and you will be eligible to be rehired when fiscal conditions improve.

A Job Referral Service has been established in the Employment Division of the Department. This service will coordinate with other City agencies and with the private sector in seeking employment for you. You can avail yourself of this service by calling 374-6818. You will be given all possible assistance in obtaining employment.

We hope this service will be of help to you in these trying circumstances.

Sincerely,

Michael J. Codd
POLICE COMMISSIONER

Ny1 entrance ex.
(9080)

PATROLMAN

This examination is open only to men.

A single list will be established from this examination and appointments will be made to either Patrolman or Police Trainee (Police Department) depending on age.

Police Trainee is a trainee class of positions. A Police Trainee will receive a regular appointment as a Probationary Patrolman on reaching his 21th birthday, or as shortly thereafter as practicable, without taking any further written or physical tests, provided he has a satisfactory record as trainee and provided he passes a medical test identical to the one given to Patrolman candidates.

Salary, Vacancies and Benefits (Patrolman): The entrance salary is $9,499 per annum at present. Patrolmen receive increments of $221 at the end of their first year, $551 at the end of their second year and $679 at the end of their third year, in the Police Department. The salary reached through these increments is $10,950 per annum. Other benefits include an annual uniform allowance, 11 paid holidays annually, a generous annual leave, sick leave, membership in a liberal pension system, the Social Security System, a welfare fund, and a health insurance plan. There are many vacancies.

Police Trainee (Police Department): The entrance salary is $4,900 per annum. There will be an increment of $240 per annum after each year of trainee service up to a maximum of four increments. There will be a considerable number of positions in the Police Department under this program.

Many benefits are, or may be enjoyed by New York City employees. These benefits include generous annual leave, sick leave, membership in a liberal pension system, the Social Security System, a health insurance plan wholly paid for by The City of New York and the blood credit program.

Applications: *Filing Period* — Pre-application forms issued and received Monday through Friday from 9 a. m. to 5 p. m., except Thursday from 8:30 a. m. to 5:30 p. m., and Saturday from 9 a. m. to 12 noon from September 1, 1969 through September 23, 1969.

Pre-application forms are obtainable free either by the applicant in person or by his representative at the Application Section of the Department of Personnel at 49 Thomas Street, New York, N. Y. 10013. They will also be mailed on request provided that the request to the above section and address is accompanied by a stamped (6 cents) self-addressed 9½-inch envelope for each application requested. All such mail requests must be postmarked not later than September 16, 1969. A pre-application form submitted by mail must be received no later than the last day for receipt of pre-application forms.

Pre-application forms are also issued in person (but not received) at all branches of the public library systems in the various boroughs of New York City, Mount Vernon, New Rochelle, White Plains and Yonkers.

Regular applications will be issued and accepted for filing in person only at the time and place of the written test.

Date and Place of Test: The written test is expected to be held October 25, 1969. This date is tentative only and may be changed if circumstances so demand.

Promotion Opportunities: The Administrative Code provides that Sergeants shall be selected from among Patrolmen of the First Grade. Sergeants are eligible for promotion examination to Lieutenant; Lieutenants are eligible for promotion examination to Captain.

Time in service as a Police Trainee shall not be considered as service in the uniformed force for pension or retirement purposes, nor in computing seniority in a promotion examination, nor in granting advancement in grade as a Patrolman.

Age Requirements (Patrolman): The Administrative Code provides that only persons shall be appointed Patrolman who shall be on the date of the written test less than 29 years of age; and the Public Officers Law provides that persons shall be at least 21 years of age at the time of appointment.

Exception: All persons who were engaged in military duty, as defined in Section 243 of the Military Law, subsequent to June 1, 1940, may deduct the length of time, not exceeding a total of six years, which they spent in such military duty from their actual age in determining their eligibility (Sub. 10a, Section 243, Military Law).

Police Trainee: Candidates must be at least 16 years of age on the date of the written test and at least 17 years of age at time of appointment.

At the time of investigation, applicants will be required to submit proof of date of birth by transcript of record of the Bureau of Vital Statistics or other satisfactory evidence. Any wilful misstatement may be cause for disqualification.

Minimum Requirements: At the time of appointment: (a) graduation from a four-year senior high school course, or (b) possession of an acceptable high school equivalency diploma or U.S. Armed Forces Institute G.E.D. certificate (a score of at least 35 on each of the five tests and a total score of at least 225 in the examination for the diploma or certificate); or (c) certification of having passed the above examination with these scores.

[illegible] time of appointment [illegible] [illegible] effect.

Applicants for patrolman must not be less than 5 feet 7 inches (bare feet) in height and must approximate normal weight for height. For appointment as Police Trainee, eligibles must meet this height requirement prior to appointment. Required vision 20/30 in each eye separately, without glasses.

At the time of appointment as a Probationary Patrolman, residence in New York City, or in Nassau, Westchester, Suffolk, Orange, Rockland, or Putnam Counties is required. Also at the time of appointment as a Probationary Patrolman, possession of a valid New York State motor vehicle operator's license is required.

Proof of good character will be an absolute prerequisite to appointment. The following are among the factors which would ordinarily be cause for disqualification: (a) conviction of an offense, the nature of which indicates lack of good moral character or disposition toward violence or disorder; (b) repeated conviction of an offense, where such convictions indicate a disrespect for the law; (c) repeated discharge from employment where such discharges indicate poor performance or inability to adjust to discipline; (d) addiction to narcotics or excessive use of alcoholic beverages; (e) discharge from the Armed Forces other than the standard honorable discharge. In accordance with the provisions of the Administrative Code, persons convicted of a felony are not eligible for positions in the uniformed forces of the Police Department. In addition, the rules of the City Civil Service Commission provide that no person convicted of petit larceny, or who has been dishonorably discharged by the Armed Forces shall be examined, certified or appointed as a patrolman.

The Police Commissioner has the right to appoint one out of three on each certification.

The rules of the City Civil Service Commission provide that no name shall be certified more than three times to the same appointing officer for the same or similar position, unless at such officer's request.

Those appointed as Probationary Patrolman must serve a probationary period of one year.

A Police Trainee will not be considered a member of the uniformed force or a peace officer.

Duties of Patrolman: To perform general police duties in the various branches of the department; to perform all additional functions for the rank prescribed by relevant laws, Rules and Procedures, orders or directives of the Police Department; and to perform special duties or assignments as directed by the Police Commissioner in his discretion.

Duties of Police Trainee: Following orientation and training at the Police Academy, performs, under direct supervision, routine non-law enforcement tasks in Police Headquarters or field units; performs related work.

Examples of Typical Tasks (Police Trainee): [illegible] in the preparation of records, documents, correspondence, reports, filing, typing, etc., assists precinct detectives in a clerical capacity; assists members of specialized units in their clerical tasks; operates switchboards.

Tests: Written, weight 100, 75% required.

The written test will be of the multiple choice type and will be designed to test the candidates' intelligence, initiative, judgment and capacity to learn the work of a police trainee and a patrolman. It may include questions on police situations, reading comprehension, arithmetic reasoning and civic awareness.

Candidates who pass the written test will be required to pass a qualifying physical test. This qualifying physical test may start on November 17, 1969. No second opportunity will be given to candidates who fail the qualifying physical test; or who fail to appear for the qualifying physical test, except those on active military duty.

The physical test will be designed to test the strength, agility, and power of candidates in addition, the physical test for patrolman will include a test for height. Candidates will take the physical tests at their own risk of injury, although every effort will be made to safeguard them. Medical evidence to allow participation in the physical test may be required and the Department of Personnel reserves the right to exclude from the physical test any candidate who upon examination of such evidence is apparently medically unfit. Candidates will be required to achieve a minimum mark of 70% or higher on the physical test in order to qualify. Medical and Physical requirements as posted on the Department of Personnel's Bulletin Board must be met.

Candidates shall be rejected for any deficiency, abnormality or disease that tends to impair health or fitness. Such causes for rejection include but are not limited to defective vision, heart and lung disease, hernia, paralysis and defective hearing. A history of any psychoneurotic disorder may disqualify. Persons must be free from such physical or personal abnormalities or deformities as to speech and appearance as would handicap them in the performance of their duties as a Patrolman.

Candidates who fail to attain the pass mark set for any test, subject or part of the examination shall be deemed to have failed the examination and no further test, subject, or part of the examination shall be rated.

Candidates are warned to make full and complete statements on their application blanks and medical questionnaires. Misrepresentation is ground for disqualification.

9080
17,700 filed
6,826 appeared
4,107 passed
2,713 failed
4 [illegible]

10/25/69

DEPARTMENT OF PERSONNEL CITY CIVIL SERVICE COMMISSION

NOTICE OF EXAMINATION

No. 9081
POLICEWOMAN

This examination is open only to women.

Salary, Vacancies and Benefits: Effective October 1, 1969, the entrance salary is $9,499 per annum. Policewomen receive increments of $221 at the end of their first year, $551 at the end of their second year and $679 at the end of their third year in the Police Department. The salary reached through these increments is $10,950 per annum.

Other benefits include an annual uniform allowance, 11 paid holidays annually, generous annual leave, sick leave, membership in a liberal pension system, the Social Security System, a welfare fund and a health insurance plan.

Many appointments will be made during the life of the list.

Applications: *Filing Period* — Pre-application forms issued and received Monday through Friday from 9 a. m. to 5 p. m., except Thursday from 8:30 a. m. to 5:30 p. m., and Saturday from 9 a. m. to 12 noon, from September 3, 1969 through September 23, 1969.

Pre-application forms are obtainable free either by the applicant in person or by his representative at the Application Section of the Department of Personnel at 49 Thomas Street, New York, N. Y. 10013. They will also be mailed on request provided that the request to the above section and address is accompanied by a stamped (6 cents) self-addressed 9½-inch envelope for each application requested. All such mail requests must be postmarked not later than September 16, 1969. A pre-application form submitted by mail must be postmarked no later than the last date for receipt of pre-application forms.

Pre-application forms are also issued in person (but not received) at all branches of the public library systems in the various boroughs in New York City, Mount Vernon, New Rochelle, White Plains and Yonkers.

Regular applications will be issued and accepted for filing in person only at the time and place of the written test.

Date of Test: The written test is expected to be held October 25, 1969. This date is tentative only and may be changed if circumstances so demand.

Promotion Opportunities: Policewomen are eligible for promotion examination to Sergeant. Sergeants are eligible for promotion examination to Lieutenant. Lieutenants are eligible for promotion examination to Captain.

Age Requirements: The Administrative Code provides that only persons shall be appointed Policewoman who shall be on the date of the written test less than 29 years of age; and the Public Officers Law provides that persons shall be at least 21 years of age at the time of appointment.

Candidates must be not less than 19 years of age on the date of the written test.

Exception: All persons who were engaged in military duty, as defined in Section 243 of the Military Law, subsequent to July 1, 1940, may deduct the length of time, not exceeding a total of six years, which they spent in such military duty from their actual age in determining their eligibility (Sub. 10a, Section 243, Military Law).

At the time of investigation, applicants will be required to submit proof of date of birth by transcript of record of the Bureau of Vital Statistics or other satisfactory evidence. Any wilful misstatement may be cause for disqualification.

Minimum Requirements: At the time of appointment: (a) graduation from a four-year senior high school course, or (b) possession of an acceptable high school equivalency diploma or United States Armed Forces Institute G. E. D. certificate (a score of at least 35 on each of the five tests and a total score of at least 225 in the examination for the diploma or certificate); or (c) certification of having passed the above examination with these scores.

At the time of appointment applicants must be United States citizens.

Applicants must not be less than 5 feet 2 inches (bare feet) in height and must approximate normal weight for height. Required vision, 20/30 in each eye separately, without glasses.

At the time of appointment as a Probationary Policewoman, residence in New York City, or in Nassau, Westchester, Suffolk, Orange, Rockland, or Putnam Counties is required. Also, at the time of appointment as a Probationary Policewoman, possession of a valid New York State motor vehicle operator's license is required.

Proof of good character will be an absolute prerequisite to appointment. The following are among the factors which would ordinarily be cause for disqualification: (a) conviction of an offense, the nature of which indicates lack of good moral character or disposition toward violence or disorder; (b) repeated conviction of an offense where such convictions indicate a disrespect for the law; (c) repeated discharge from employment where such discharges indicate poor performance or inability to adjust to discipline; (d) addiction to narcotics or excessive use of alcoholic beverages; (e) discharge from the Armed Forces other than the standard honorable discharge. In accordance with the provisions of the Administrative Code, persons convicted of a felony are not eligible for positions in the uniformed forces of the Police Department. In addition, the rules of the City Civil Service Commission provide that no person convicted of petit larceny, or who has been dishonorably discharged by the Armed Forces shall be examined, certified or appointed as a policewoman.

The Police Commissioner has the right to appoint one out of three on each certification.

The rules of the City Civil Service Commission provide that no name shall be certified more than three times to the same appointing officer for the same or similar position, unless at such officer's request.

Those appointed as Probationary Policewoman must serve a probationary period of one year.

Duties: To perform general police duties in the various branches of the department; to perform all additional functions for the rank prescribed by relevant laws, Rules and Procedures, orders or directives of the Police Department; and to perform special duties or assignments as directed by the Police Commissioner in his discretion.

Test: Written, weight 100, 75% required.

The written test will be of the multiple-choice type and will be designed to test the candidates' intelligence, initiative, judgment and capacity to learn the work of a policewoman. It may include questions on police situations, reading comprehension, arithmetic reasoning and civic awareness.

Candidates who pass the written test will be required to pass a qualifying physical test. No second opportunity will be given to candidates who fail the qualifying physical test; or who fail to appear for the qualifying physical test, except those on active military duty.

The physical test will be designed to test the height, strength, agility, and power of candidates. Candidates will take the physical tests at their own risk of injury, although every effort will be made to safeguard them. Medical evidence to allow participation in the physical test may be required and the Department of Personnel reserves the right to exclude from the physical test any candidate who upon examination of such evidence is apparently medically unfit. Candidates will be required to achieve a minimum mark of 70% or higher on the physical test in order to qualify. Medical and Physical requirements as posted on the Department of Personnel's Bulletin Board must be met.

Candidates shall be rejected for any deficiency, abnormality or disease that tends to impair health or fitness. Such causes for rejection include but are not limited to defective vision, heart and lung diseases, hernia, paralysis and defective hearing. A history of any psychoneurotic disorder may disqualify. Persons must be free from such physical or personal abnormalities or deformities as to speech and appearance as would handicap them in the performance of their duties as a Policewoman.

Candidates who fail to attain the pass mark set for any test, subject or part of the examination shall be deemed to have failed the examination and no further test, subject or part of the examination shall be rated.

All candidates will be required to pass a qualifying medical test prior to appointment.

Candidates are warned to make full and complete statements on their application blanks and medical forms. Misrepresentation is ground for disqualification.

The pertinent sections of the General Examination Regulations are also to be considered part of this notice.

DEPARTMENT OF PERSONNEL, SOLOMON HOBERMAN, Personnel Director; GEORGE HENRY, JR., Secretary. a3.9

CITY OF NEW YORK

Commission on Human Rights
on the complaint of

Beraldine L. Acha

Complainant

-against-

City of New York; Mayor Abraham D. Beame
Michael J. Codd, Police Dept et al
Respondent

Complaint No. 697

I, Beraldine L. Acha,
residing at 666-3 Avenue - c/o Murray A. Gordan, P.C. - my attorney
charge Mayor Abraham D. Beame, Police Dept; Michael Codd, Dept. of Perso
& Civil Service Commission of City of NY
whose address is c/o Corp Counsel 1656 Municipal Bldg, NYC
with an unlawful discriminatory practice relating to Employment
at
on or about May 29, 1973 and continuing into present
by applying discriminate - seniority rules and by terminating my

because of my Race ( ), Color ( ), Creed ( ), National Origi
Physical Handicap ( ), Age ( ), Sex (X), Arrest Record ( ),
Retaliation ( ), Marital Status ( ).

The particulars are:

1. I was appointed as a police officer/female on 1

2. On June 24 1975, I received written notification of my termi
effective June 30, 1975.

3. On or about October 25, 1969 I took Civil Service examination
for the position of police woman. This examination was administered
to women. On the same day an identical civil service examination
was given for the position of police trainee/patrolman. This examinat
was administered to only men.

4. Although the examination numbers were different and the examin
were administered in different locations, the examination questions w
the same and the examinations were graded in the same fashion. Separ
eligibility lists were, nevertheless, established as a result of the
examinations.

Veterans were and are permitted to raise their score on the examinati ous their ranking for appointment solely because of their veteran's us. This practice had an adverse effect on women and continues to versely affect me as fully set forth below.

6. During the period 1969 to 1973, no permanent appointments were made from the two lists. In 1973 the two titles were merged, and in approximately January 1973 normal appointments were commenced.

7. However, in the period 1969 to 1973, men were appointed as trainees from the all male list and thus, their seniority dates from a period when no females were or could have been appointed.

8. Although the titles were merged, two separate eligibility lists were maintained. The Police Department determined internally to hire at a ratio of 4 men to 1 woman from the two examination lists regardless of rank on the respective list. Thus, since January of 1973 approximately 1,236 male police officers have been appointed and approximately 513 female police officers have been appointed.

9. Prior to January 1973 there was a "quota" of approximately 351 women in the Police Department, and a "quota" of approximately 90 police women. Prior to 1973 women were not assigned to routine patrol duty but were all assigned to a separate unit for women known as the Police Womens' Bureau.

0. During the period since 1960 approximately one examination was given every two years for the position of Police Trainee/Patrolman but only two examinations were open to women: a 1964 examination for the position Policewoman and the aforementioned examination for Policewoman, #9081 given in 1969.

1. I fulfilled the minimum eligibility requirements for the position of Police Officer prior to 1969 and was willing and able to take an examination for such position but no examination was open to me during the period 1964 to 1969. I would have taken such an examination had it been available to me.

2. There are presently approximately 30,374 persons employed by the New York City Police Department. 618 are female police officers. 21,669 are male police officers. There is a total of 724 women employed by the Department.

3. As a result of the City's fiscal crisis 5,000 persons are to be laid off from the Police Department. 4,000 have, to date, been notified of the lay-offs. Of the 4,000 approximately 371 are female police officers. All of these female police officers were hired after January of 1973 from a list resulting from the 1969 examination, #9081. These women were the first women to be routinely assigned to patrol duty in the New York Police Department.

4. In connection with this layoff, veterans are given additional unearned months of seniority based solely upon their status as veterans. This practice has an adverse effect on women.

. I am among the approximately 371 female police officers due to be terminated in this layoff, based upon my date of appointment.

. My date of appointment and therefore the date from which my

rity accrue at more recent than these dates would have been had
en a man with the same qualifications, skills, and abilities. I have
refore been adversely affected by the aforementioned discriminatory
actices because of sex.

7. The proposed lay-offs will operate to perpetuate into the present the effects of respondent's past sex discrimination.

I am a woman. I charge that Respondent have discriminated against me in violation of the Administrative Code of the City of New York and that as a result of Respondents' unlawful discriminatory practices I have suffered expense, loss of earnings, humiliation, outrage and mental anguish for which I claim compensatory damages.

I have not commenced any action, civil, criminal or administrative based upon the above allegation other than the following:

....

....

CITY OF NEW YORK)
ss.:
COUNTY OF [illegible])

Berald L. Ach
(Signature of Complainant)

Beraldine L. Acha, being duly sworn, deposes and s that she is the Complainant herein; that she has read the foregoing complaint and knows the contents thereof; that the same is true of her own knowledge, except as to the matters therein stated on informat and belief, and that as to those matters she believes the same to b true.

Subscribed and sworn to before me

this 25 day of June, 1975

Vivienne White
VIVIENNE WHITE
COMMISSIONER OF DEEDS
CITY OF NEW YORK 2-[illegible]
Certificate filed in New York County
Commission Expires October 1, 1975

Beraldine L. Ach
(Signature of Complainant)

EP-5 5/75 (1 of 2)

/1j

[illegible]

Commission on Human Rights
on the complaint of

rlene Egan

Complainant

-against-

ity of N.Y.; Mayor Abraham D. Beame; Michael
. Codd; Police Dept.; Dept. of Personnel and
ivil Service Commission

Respondents

Complaint No. 6973-EC

Arlene Egan

r [illegible] at ...c/o Murray A. Gordon P.C. 666 Third Avenue-my attorney...

c ...above named Respondents...

v e address is...Corp. Counsel 1656 Municipal Building, New York, N.Y....

w . on unlawful discriminatory practice relating to...Employment...

a 1 Police Plaza

o or about...June 25, 1973 and continuing unto present...

b ...Applying discriminatory seniority rules and terminating my emp oyment...

b use of my Race ( ), Color ( ), Creed ( ), National Origin (

I sical Handicap ( ), Age ( ), Sex (x), Arrest Record ( ),

Retaliation ( ), Marital Status ( ).

particulars are:

1. I was appointed as a police officer/female on June 25, 1973.
2. On June 20, 1975, I received written notification of my termination, effective June 30, 1975.
3. On or about October 25, 1969, I took civil service examination #9081 for the position of police-woman. This examination was administered only to women. On the same day an identical civil service examination #9080 was given for the position of police-trainee, patrolman. This examination was administered only to m

4. Although the examination numbers were different and the examinations were administered in different locations, the examination questions were the same and the examinations were graded in the same fashion. Separate eligibility lists were, nevertheless, established as a result of the two examinations.

5. Veterans were and are permitted to raise their score on the examination and thus their ranking for appointment, solely becau of their veterans status. This practice had an adverse affect on women and continues to adversely affect me as fully set forth below.

6. During the period 1969 to 1973 no permanent appointments were made from the two lists. In 1973 the two titles were merged, and in approximately January 1973 normal appointments were comm

7. However, in the period 1969 to 1973, men were appointed as trainees from the all male list and thus, their seniority dates from a period when no females were or could have been appointed.

8. Although the titles were merged, two separate eligibility lists were maintained. The Police Department determined internally to hire at a ratio of 4 men to 1 woman from the two examination lists, regardless of rank on the respective list. Thus, since January of 1973 approximately 4,236 male police officers have been appointed and approximately 513 female police officers hav been appointed.

9. Prior to January 1973 there was a "quota" of approximately 354 women in the Police Department, and a "quota" of approximately 290 police women. Prior to 1973 women were not assigned to routine patrol duty but were all assigned to a separate unit for women known as the Police Women's Bureau.

10. During the period since 1960 approximately one examination was given every two years for the position of Police Trainee/Patro man but only two examinations were open to women: 1964 examination for the position Policewoman and the aforementioned examination for Policewoman, #9081 given in 1969.

11. I fulfilled the minimum eligibility requirements for the posit of Police Officer prior to 1969 and was willing and able to take an examination for such position but no examination was open to me during the period of 1964 to 1969. I would have tal such an examination had it been available to me.

12. There are presently approximately 30,374 persons employed by the New York City Police Department. 618 are female police officers. 21,669 are male police officers. There is a total of 724 women employed by the Department.

13. As a result of the City's fiscal crisis, 5,000 persons are to be laid off from the Police Department. 4,000 have, to date, been notified of the lay-offs. Of the 4,000 approximately 371 are female police officers. All of these female police officers were hired after January of 1973 from a list resulting from the 1969 examination, #9081. These women were the first women to be routinely assigned to patrol duty in the New York Police Department.

14. In connection with this lay-off, veterans are given additional unearned months of seniority based solely upon their status as veterans. This practice has an adverse effect on women.

15. I am among the approximately 371 female police officers due to be terminated in this lay-off, based upon my date of appointment.

16. My date of appointment and therefore the date from which my seniority accrues is more recent than those dates would have been had I been a man with the same qualifications, skills, and abilities. I have therefore been adversely affected by the aforementioned discriminatory practices because of sex.

17. The proposed lay-offs will operate to perpetuate into the present the effects of respondent's past sex discrimination.

A 171

I am a woman. I charge that Respondent have discriminated against me in violation of the Administrative Code of the Cit of New York and that as a result of Respondents' unlawful discriminator practices I have suffered expense, loss of earnings, humiliation, outrag and mental anguish for which I claim compensatory damages.

I have not commenced any action, civil, criminal or administrative based upon the above allegation other than the following:

....

....

CITY OF NEW YORK)
ss.:
COUNTY OF NEW YORK)

....
(Signature of Complainan

Arlene Egan ...., being duly sworn, deposes and that....she..........is the Complainant herein; that..she...has read the foregoing complaint and knows the contents thereof; that the same is tru of..her...own knowledge, except as to the matters therein stated on infor and belief, and that as to those matters..she.......believes the same to true.

Subscribed and sworn to before me

this 25 day of June, 1975

VIVIENNE WHITE
COMMISSIONER OF DEEDS
CITY OF NEW YORK [illegible]
Certificate filed in New York County
Commission Expires October 1, 1975

....
(Signature of Complainan

ET-5 5/75 (2 of 2)
lf

A 172

(PLEASE PRINT OR TYPE)

CHARGE OF DISCRIMINATION	EEOC CHARGE NO.	FORM APPROVED OMB NO. 124-R0001

INSTRUCTIONS
If you have a complaint, fill in this form and mail it to the Equal Employment Opportunity Commission's District Office in your area. In most cases, a charge must be filed with the EEOC within a specified time after the discriminatory act took place. IT IS THEREFORE IMPORTANT TO FILE YOUR CHARGE AS SOON AS POSSIBLE. (Attach extra sheets of paper if necessary.)

CAUSE OF DISCRIMINATION
☐ RACE OR COLOR ☒ SEX
☐ RELIGIOUS CREED
☐ NATIONAL ORIGIN

NAME (Indicate Mr. or Ms.): Ms. Beraldine L. Acha
DATE OF BIRTH: December 18, 1941
STREET ADDRESS: c/o Murray A.Gordon, P. C. 666 Third Avenue
COUNTY: New York
SOCIAL SECURITY NO.: 072-32-7273
CITY, STATE, AND ZIP CODE: New York, New York 10017
TELEPHONE NO. (Include area code): 212/661-7900

THE FOLLOWING PERSON ALWAYS KNOWS WHERE TO CONTACT ME

NAME (Indicate Mr. or Ms.): Murray A. Gordon, P. C.
TELEPHONE NO. (Include area code): 212-661-7900
STREET ADDRESS: 666 Third Avenue
CITY, STATE, AND ZIP CODE: New York, New York 10017

LIST THE EMPLOYER, LABOR ORGANIZATION, EMPLOYMENT AGENCY, APPRENTICESHIP COMMITTEE, STATE OR LOCAL GOVERNMENT WHO DISCRIMINATED AGAINST YOU (If more than one, list all)

NAME: City of New York
TELEPHONE NO. (Include area code):
STREET ADDRESS: Corporation Counsel 1656 Municipal Building
CITY, STATE, AND ZIP CODE: New York City, New York

OTHERS WHO DISCRIMINATED AGAINST YOU (If any): Police Dept. Michael J. Codd, Comm., Dept. of Personnel and Abraham D.Beame, Civil Service Commission

CHARGE FILED WITH STATE/LOCAL GOV'T. AGENCY: ☒ YES ☐ NO
DATE FILED: 6/25/75
AGENCY CHARGE FILED WITH (Name and address): N.Y. C. Human Rights Commission

APPROXIMATE NO. OF EMPLOYEES/MEMBERS OF COMPANY OR UNION THIS CHARGE IS FILED AGAINST: 30,000
DATE MOST RECENT OR CONTINUING DISCRIMINATION TOOK PLACE (Month, day, and year): 6/24/75

Explain what unfair thing was done to you and how other persons were treated differently. Understanding that this statement is for the use of the United States Equal Employment Opportunity Commission, I hereby certify:

See Attached Sheet

6/25/75

I swear or affirm that I have read the above charge and that it is true to the best of my knowledge, information and belief.

DATE: 6/25/75
CHARGING PARTY (Signature):

Subscribed and sworn to before this EEOC representative.

DATE:
SIGNATURE AND TITLE:

NOTARY PUBLIC

SUBSCRIBED AND SWORN TO BEFORE ME THIS DATE (Day, month, and year)
MARINA [illegible]
Notary Public, State of New York
No. 31-1509617
Qualified in New York County
Term Expires March 30, 1977

SIGNATURE (If it is difficult for you to get a Notary Public to sign this, sign your own name and mail to the District Office. The Commission will notarize the charge for you at a later date.)

EEOC FORM JUN 72 5 Previous editions of this form may be used.

U.S. GOVERNMENT PRINTING OFFICE : 1973-728-451/1250 3-1
GPO 871-188

1. I was appointed as a police officer/female on May 29, 1973.

2. On June 24, 1975, I received written notification of my termination, effective June 30, 1975.

3. On or about October 25, 1969, I took civil service examination #9081 for the position of police-woman. This examination was administered only to women. On the same day an identical civil service examination #9080 was given for the position of police-trainee, patrolman. This examination was administered only to men.

4. Although the examination numbers were different and the examinations were administered in different locations, the examination questions were the same and the examinations were graded in the same fashion. Separate eligibility lists were, nevertheless, established as a result of the two examinations.

5. Veterans were and are permitted to raise their score on the examination and thus their ranking for appointment, solely because of their veterans status. This practice had an adverse affect on women and continues to adversely affect me as fully set forth below.

6. During the period 1969 to 1973 no permanent appointments were made from the two lists. In 1973 the two titles were merged, and in approximately January 1973 normal appointments were commenced.

7. However, in the period 1969 to 1973, men were appointed as trainees from the all male list and thus, their seniority dates from a period when no females were or could have been appointed.

8. Although the titles were merged, two separate eligibility lists were maintained. The Police Department determined internally to hire at a ratio of 4 men to 1 woman from the two examination lists, regardless of rank on the respective

[illegible] ANGEL
[illegible] New York
[illegible] County
[illegible] York County
Commission Expires March 30, 1977

6/25/75

list. Thus, since January of 1973 approximately 4,236 male officers have been appointed and approximately 513 female police officers have been appointed.

9. Prior to January 1973 there was a "quota"of approximately 354 women in the Police Department, and a "quota" of approximately 290 police women. Prior to 1973 women were not assigned to routine patrol duty but were all assigned to a separate unit for women known as the Police Women's Bureau.

10. During the period since 1960 approximately one examination was given every two years for the position of Police Trainee/Patrolman but only two examinations were open to women: 1964 examination for the position Policewoman and the aforementioned examination for Policewoman, #9081 given in 1969.

11. I fulfilled the minimum eligibility requirements for the position of Police Officer prior to 1969 and was willing and able to take an examination for such position but no examination was open to me during the period of 1964 to 1969. I would have taken such an examination had it been available to me.

12. There are presently approximately 30,374 persons employed by the New York City Police Department. 618 are female police officers. 21,669 are male police officers. There is a total of 724 women employed by the Department.

13. As a result of the City's fiscal crisis, 5,000 persons are to be laid off from the Police Department. 4,000 have, to date, been notified of the lay-offs. Of the 4,000 approximately 371 are female police officers. All of these female police officers were hired after January of 1973 from a list resulting from the 1969 examination, #9081. These women were the first women to be routinely assigned to patrol duty in the New York Police Department.

14. In connection with this lay-off, veterans are given additional unearned months of seniority based solely upon their status as veterans. This practice has an adverse effect on women.

[illegible] York
[illegible] County
[illegible] York County
Commission Expires March 30, 1977

6/25/75

15. I am among the approximately 371 female police officers due to be terminated in this lay-off, based upon my date of appointment.

16. My date of appointment and therefore the date from which my seniority accrues is more recent than those dates would have been had I been a man with the same qualifications, skills, and abilities. I have therefore been adversely, affected by the aforementioned discriminatory practices because of sex.

17. The proposed lay-offs will operate to perpetuate into the present the effects of respondent's past sex discrimination.

[illegible] ANGEL
Notary Public, State of New York
No. 31-1500617
Qualified in New York County
Cert. filed in New York County
Commission Expires March 30, 1977

Sworn to before me this
25 day of June, 1975

A 176

CHARGE OF DISCRIMINATION

EEOC CHARGE NO.:

FORM APPROVED OMB NO. 124-R0001

INSTRUCTIONS

If you have a complaint, fill in this form and mail it to the Equal Employment Opportunity Commission's District Office in your area. In most cases, a charge must be filed with the EEOC within a specified time after the discriminatory act took place. IT IS THEREFORE IMPORTANT TO FILE YOUR CHARGE AS SOON AS POSSIBLE. *(Attach extra sheets of paper if necessary.)*

CAUSE OF DISCRIMINATION

☐ RACE OR COLOR ☒ SEX
☐ RELIGIOUS CREED
☐ NATIONAL ORIGIN

NAME *(Indicate Mr. or Ms.)*: Ms. Arlene Egan

DATE OF BIRTH: June 15, 1941

STREET ADDRESS: c/o Murray A. Gordon, P. C. 666 Third Avenue

COUNTY: New York

SOCIAL SECURITY NO.: 151-32-2561

CITY, STATE, AND ZIP CODE: New York, New York 10017

TELEPHONE NO. *(Include area code)*: 212-661-7900

THE FOLLOWING PERSON ALWAYS KNOWS WHERE TO CONTACT ME

NAME *(Indicate Mr. or Ms.)*: Murray A. Gordon, P. C.

TELEPHONE NO. *(Include area code)*: 212-661-7900

STREET ADDRESS: 666 Third Avenue

CITY, STATE, AND ZIP CODE: New York, New York 10017

LIST THE EMPLOYER, LABOR ORGANIZATION, EMPLOYMENT AGENCY, APPRENTICESHIP COMMITTEE, STATE OR LOCAL GOVERNMENT WHO DISCRIMINATED AGAINST YOU *(If more than one, list all)*

NAME: City of New York

TELEPHONE NO. *(Include area code)*:

STREET ADDRESS: Corporation Counsel, 1657 Municipal Bldg.

CITY, STATE, AND ZIP CODE: New York City

OTHERS WHO DISCRIMINATED AGAINST YOU *(If any)*: Abraham D. Beame, Michael J. Codd, Dept. Personnel
Civil Service Commission

CHARGE FILED WITH STATE/LOCAL GOV'T. AGENCY: ☒ YES ☐ NO

DATE FILED: 6/25/75

AGENCY CHARGE FILED WITH *(Name and address)*: N.Y.C. Human Rights Commission

APPROXIMATE NO. OF EMPLOYEES/MEMBERS OF COMPANY OR UNION THIS CHARGE IS FILED AGAINST: 30,000

DATE MOST RECENT OR CONTINUING DISCRIMINATION TOOK PLACE *(Month, day, and year)*: 6/20/75

Explain what unfair thing was done to you and how other persons were treated differently. Understanding that this statement is for the use of the United States Equal Employment Opportunity Commission, I hereby certify:

See Attached Sheet

I swear or affirm that I have read the above charge and that it is true to the best of my knowledge, information and belief.

DATE: 6/25/75

CHARGING PARTY (Signature):

Subscribed and sworn to before this EEOC representative.

DATE:

SIGNATURE AND TITLE:

NOTARY PUBLIC

SUBSCRIBED AND SWORN THIS DATE *(Day, month, and year)*: 6/25/75

MARINN WENGEL
Notary Public, State of New York
No. 31-1509617
Qualified in New York County
Cert. Filed in New York County
Commission Expires March 30, 1977

SIGNATURE *(If it is difficult for you to get a Notary Public to sign this, sign your own name and mail to the District Office. The Commission will notarize the charge for you at a later date.)*

EEOC FORM JUN 72 5 Previous editions of this form may be used.

U.S. GOVERNMENT PRINTING OFFICE : 1973-728-451/1350 3-1
GPO 871-189

1. I was appointed as a police officer/female on June 25, 1973.

2. On June 20, 1975, I received written notification of my termination, effective June 30, 1975.

3. On or about October 25, 1969, I took civil service examination #9081 for the position of police-woman. This examination was administered only to women. On the same day an identical civil service examination #9080 was given for the position of police-trainee, patrolman. This examination was administered only to men.

4. Although the examination numbers were different and the examinations were administered in different locations, the examination questions were the same and the examinations were graded in the same fashion. Separate eligibility lists were, nevertheless, established as a result of the two examinations.

5. Veterans were and are permitted to raise their score on the examination and thus their ranking for appointment, solely because of their veterans status. This practice had an adverse affect on women and continues to adversely affect me as fully set forth below.

6. During the period 1969 to 1973 no permanent appointments were made from the two lists. In 1973 the two titles were merged, and in approximately January 1973 normal appointments were commenced.

7. However, in the period 1969 to 1973, men were appointed as trainees from the all male list and thus, their seniority dates from a period when no females were or could have been appointed.

8. Although the titles were merged, two separate eligibility lists were maintained. The Police Department determined internally to hire at a ratio of 4 men to 1 woman from the two examination lists, regardless of rank on the respective

MARINA ANGEL
Notary Public S [illegible] New York
No. 31-1509617
Qualified in New York County
Cert. Filed in New York County
Commission Expires March 30, 1977

list. Thus, since January of 1973 approximately 4,236 male officers have been appointed and approximately 513 female police officers have been appointed.

9. Prior to January 1973 there was a "quota"of approximately 354 women in the Police Department, and a "quota" of approximately 290 police women. Prior to 1973 women were not assigned to routine patrol duty but were all assigned to a separate unit for women known as the Police Women's Bureau.

10. During the period since 1960 approximately one examination was given every two years for the position of Police Trainee/Patrolman but only two examinations were open to women: 1964 examination for the position Policewoman and the aforementioned examination for Policewoman, #9081 given in 1969.

11. I fulfilled the minimum eligibility requirements for the position of Police Officer prior to 1969 and was willing and able to take an examination for such position but no examination was open to me during the period of 1964 to 1969. I would have taken such an examination had it been available to me.

12. There are presently approximately 30,374 persons employed by the New York City Police Department. 618 are female police officers. 21,669 are male police officers. There is a total of 724 women employed by the Department.

13. As a result of the City's fiscal crisis, 5,000 persons are to be laid off from the Police Department. 4,000 have, to date, been notified of the lay-offs. Of the 4,000 approximately 371 are female police officers. All of these female police officers were hired after January of 1973 from a list resulting from the 1969 examination, #9081. These women were the first women to be routinely assigned to patrol duty in the New York Police Department.

14. In connection with this lay-off, veterans are given additional unearned months of seniority based solely upon their status as veterans. This practice has an adverse effect on women.

12/23/75

MARINA ANGEL
Notary Public, State of New York
No. 31-1509617
Qualified in New York County
Cert. filed in New York County
Commission Expires March 30, 1977

15. I am among the approximately 371 female police officers due to be terminated in this lay-off, based upon my date of appointment.

16. My date of appointment and therefore the date from which my seniority accrues is more recent than those dates would have been had I been a man with the same qualifications, skills, and abilities. I have therefore been adversely, affected by the aforementioned discriminatory practices because of sex.

17. The proposed lay-offs will operate to perpetuate into the present the effects of respondent's past sex discrimination.

MARTHA ANGEL
Sta. of New York
31-1509517
York County
New York County
ires March 30, 197

S[illegible] to before me this 25
, day of June, 1975

A 180

UNITED STATES DEPARTMENT OF JUSTICE

WASHINGTON, D.C. 20530

Address Reply to the
Division Indicated
and Refer to Initials and Number

JSP:HAG:ljt

NOTICE OF RIGHT TO SUE
WITHIN 90 DAYS

APR 2 1976

AIR MAIL

Ms. Beraldine L. Acha
c/o Murray A. Gordon, Esquire
Murray A. Gordon, P. C.
Attorneys at Law
666 Third Avenue
New York, New York 10017

Re: EEOC Charge Against City of New York;
Police Department; Michael J. Codd,
Commissioner; Department of Personnel;
Abraham D. Beame; and Civil Service
Commission
No. TNY5-1347

Dear Ms. Acha:

Because you have filed a charge against the respondents named above and more than 180 days have elapsed since the Equal Employment Opportunity Commission assumed jurisdiction over that charge, and no suit based on that charge has been filed by this Department, and since you through your attorney have specifically requested this Notice, you are hereby notified that you have the right to institute a civil action under Title VII of the Civil Rights Act of 1964, as amended, 42 U.S.C. 2000e *et seq.*, against the above-named respondents.

If you choose to commence a civil action, such suit must be filed in the appropriate United States District Court within 90 days of your receipt of this Notice.

Your attorney may inspect the investigative file pertaining to the case at a time and place convenient to the parties. That file is located in the EEOC District Office, at 90 Church Street, Room 1301, New York, New York 10007.

We request that you send this Department a copy of any complaint initiating suit.

This Notice should not be taken to mean that an agency of the United States has made a judgment as to whether or not your charge is meritorious.

Sincerely,

J. STANLEY POTTINGER
Assistant Attorney General
Civil Rights Division

By: Herbert A. Goldsmith Jr.
HERBERT A. GOLDSMITH, JR.
Attorney
Employment Section

cc: Arthur W. Stern
District Director
New York District Office
Equal Employment Opportunity
Commission
90 Church Street, Room 1301
New York, New York 10007

A 182

UNITED STATES DEPARTMENT OF JUSTICE

WASHINGTON, D.C. 20530

Address Reply to the
Division Indicated
and Refer to Initials and Number

JSP:HAG:ljt

NOTICE OF RIGHT TO SUE
WITHIN 90 DAYS

APR 2 1976

AIR MAIL

Ms. Arlene Egan
c/o Murray A. Gordon, Esquire
Murray A. Gordon, P. C.
Attorneys at Law
666 Third Avenue
New York, New York 10017

Re: EEOC Charge Against City of New York;
Abraham D. Beame; Michael J. Codd;
Department of Personnel; and Civil
Service Commission
No. TNY5-1350

Dear Ms. Egan:

Because you have filed a charge against the respondents named above and more than 180 days have elapsed since the Equal Employment Opportunity Commission assumed jurisdiction over that charge, and no suit based on that charge has been filed by this Department, and since you through your attorney have specifically requested this Notice, you are hereby notified that you have the right to institute a civil action under Title VII of the Civil Rights Act of 1964, as amended, 42 U.S.C. 2000e *et seq.*, against the above-named respondents.

If you choose to commence a civil action, such suit must be filed in the appropriate United States District Court within 90 days of your receipt of this Notice.

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We request that you send this Department a copy of any complaint initiating suit.

This Notice should not be taken to mean that an agency of the United States has made a judgment as to whether or not your charge is meritorious.

Sincerely,

J. STANLEY POTTINGER
Assistant Attorney General
Civil Rights Division

By:
HERBERT A. GOLDSMITH, JR.
Attorney
Employment Section

cc: Arthur W. Stern
District Director
New York District Office
Equal Employment Opportunity
Commission
90 Church Street, Room 1301
New York, New York 10007

Plaintiffs' Notice of Motion for Class Certification, Summary Judgment, Preliminary Injunction, and counsel fees

UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF NEW YORK

---X

BERALDINE L. ACHA, and ARLENE M. EGAN, each individually and on behalf of all others similarly situated,

Plaintiffs,

-against-

ABRAHAM D. BEAME, individually and in his capacity as Mayor of the City of New York, MICHAEL J. CODD, individually and in his capacity as Police Commissioner of the New York City Police Department and THE CITY OF NEW YORK, as a public employer,

Defendants.

---X

NOTICE OF MOTION

Class Action
75 Civ 3128

KTD

OFFICE OF CORP. COUNSEL

76 MAY 27 P 3:49

LAW DE
CITY OF

S I R S:

PLEASE TAKE NOTICE, that the undersigned will submit to Judge Kevin T. Duffy, at Room 2903, United States Courthouse, Foley Square, City of New York, on the 17th day of June, 1976, at 10:00 A.M. in the forenoon of that day or as soon thereafter as counsel can be heard, the following motions:

(1) for an order, pursuant to Rule 23(c) of the Federal Rules of Civil Procedure and Rule 11A(c) of this Court, permitting this action to be maintained as a class action and defining the said class as the former female police officers whose employment with the New York City Police Department was terminated on or after June 30, 1975 solely for budgetary reasons;

(2) for an order, pursuant to Rule 65(a) of the Federal Rules of Civil Procedure, enjoining, staying, and prohibiting pendente lite the defendants and/or their agents,

servants, officers, and/or employees from reinstating any former police officers, other than members of the class, whose employment with the New York City Police Department was terminated on or after June 30, 1975 solely for budgetary reasons, in and to a position in said department during the pendency of this action and before the entitlement of the members of the class herein to reinstatement in the said department has been finally determined in this action;

(3) for summary judgment, pursuant to Rule 56 of the Federal Rules of Civil Procedure on the ground that there is no genuine issue as to any material fact, granting the relief demanded in the complaint, in favor of the following members of the class:

Alicia C. Parker
Charlene A. Davey
Catherine Braun
Margaret M. Moore
Mary A. Boyd
Karen A. Krizan
Laura M. Quintero
Kathleen Sammon
Margaret O'Shaughessy
Veronica M. Risi
Kerry A. Schreiner
Patricia A. Scarlett
Kathleen M. Fraher
Patricie A. Kehoe
Rosalyn Yellin
Carol S. Kranick
Monica L. Sullivan
Jane E. Deacy
Janet A. Guardino
Eleanor M. Nola
Valarie A. Doran
Anita Matusiak
Gertrude A. Campbell
Yvonne M. Mitchell
Barbara J. Keany
Linda A. Miglino
Janis L. Stenborg

Ruthann T. Pitaro
Diane B. Broccoli
Mary J. Yakonenko
Donna M. Jones
Ellen E. Finn
Catherine De La Rionda
June B. Donovan
Mary A. Ross
Patricia M. Doyle
Katherine Bridges
→Maureen Collins
Theresa A. Brown
Carmen F. Cordova
Debra P. Ferrer
Christine O'Bremski
Maureen A. Houlihan
Mary M. Peters
Patricia A. Hear
Bernice Schaffer
June Lavian
Annette Spellen
Maria J. Zapata
Patricia Boyce
Carol Grace
Mary D. Lenihan
Claire Palumbo
Bernadette Fowler

(4) for an order, pursuant to 42 U.S.C. §2000e-5(k), granting to the plaintiffs herein and the members of the class their reasonable attorney's fees and expenses as they shall be fixed by this Court in its discretion; and

(5) for such other and further relief as to this Court may seem just and proper.

MURRAY A. GORDON, P. C.

By: /s/
MURRAY A. GORDON,
a member of the firm
Attorneys for Plaintiffs
666 Third Avenue
New York, New York 10017
212-661-7900

TO:

W. BERNARD RICHLAND
Corporation Counsel
Attorney for Defendants
Municipal Building
New York, New York 10007

MR. LUTZ ALEXANDER PRAGER
Office of the General Counsel
Equal Employment Opportunity Commission
2401 E Street, N. W.
Washington, D.C. 20506

Supporting affidavit of Murray A. Gordon (class certification)

UNITED STATES DISTRICT COURT FOR
THE SOUTHERN DISTRICT OF NEW YORK

---X

BERALDINE L. ACHA, and ARLENE M. EGAN, :
each individually and on behalf of all
others similarly situated, : **AFFIDAVIT**

Plaintiffs, :

-against- :

Class Action
75 Civ 3128
KTD

ABRAHAM D. BEAME, individually and in :
his capacity as Mayor of the City of
New York, MICHAEL J. CODD, individually :
and in his capacity as Police
Commissioner of the New York City :
Police Department and THE CITY OF
NEW YORK, as a public employer, :

Defendants. :

---X

STATE OF NEW YORK)
) SS.:
COUNTY OF NEW YORK)

MURRAY A. GORDON, being duly sworn, deposes and says:

1. I am a member of the firm of Murray A. Gordon, P.C., attorneys for plaintiffs herein, and I submit this affidavit in support of plaintiffs' motion for a class action determination pursuant to Rule 23(c) of the Federal Rules of Civil Procedure and Rule 11A(c) of this Court.

2. The plaintiffs in this action are two women, formerly employed as Police Officers in the New York City Police Department (hereinafter "PD"), who were laid-off as Police Officers on June 30, 1975 solely for budgetary reasons. The defendants are the City of New York ("the City") and its Mayor and Police Commissioner.

3. This action was commenced by the filing of a complaint on June 26, 1975. An amended complaint was served, pursuant to permission of this Court, on May 6, 1976.
The action brought under Title VII of the Civil Rights Act of 1964, 42 U.S.C. §2000e _et. seq._, 42 U.S.C. §1983, and the Fourteenth Amendment to the United States Constitution, complains that, in violation of the foregoing statutory and constitutional provisions, plaintiffs were subjected by the defendants to discrimination in employment based on sex.

4. Plaintiffs brought this action pursuant to Rules 23(a) and 23(b)(2) of the Federal Rules of Civil Procedure on their own behalf and on behalf of all female Police Officers whose employment with the PD was terminated on or after June 30, 1975 solely for budgetary reasons.

5. Plaintiffs seek, _inter alia_, declaratory injunctive, and monetary relief declaring that the termination of the employment of plaintiffs and each member of the class herein

was unlawful; fixing the rightful seniority of plaintiffs and each member of the class; ordering the immediate reinstatement of plaintiffs and each member of the class retroactive for all purposes to the date of lay-off; enjoining, pendente lite and permanently, the defendants from hiring or otherwise reinstating Police Officers, other than plaintiffs and each member of the class, from the preferred list for reinstatement as currently constituted prior to fixing and determining the rightful seniority of plaintiffs and each member of the class; and awarding the plaintiffs and each member of the class full compensation.

6. The complaint meets all requirements for maintaining a class action under Rule 23.

Rule 23(a)(1). The class is sufficiently numerous that joinder of all members is impracticable. Approximately 400 female Police Officers were terminated on or after June 30, 1975 solely for budgetary reasons.

Rule 23(a)(2). There are common questions of law and fact common to all members of the class. (See amended complaint ¶¶ "11"-"36").

Rule 23(a)(3). The claims of plaintiffs are typical of those of the class. The plaintiffs' services with the PD were terminated on June 30, 1975, solely for budgetary reasons. They have not been reinstated. But for the prior discriminatory hiring practices of defendants, plaintiffs would have been hired by the PD early enough to withstand the June 30, 1975, lay-offs, or would have been reinstated on or before July 10, 1975.

Rule 23(a)(4). The plaintiffs will fairly and adequately protect the interests of the class. Plaintiffs filed complaints with the United States Equal Employment Opportunity Commission and with the New York State Commission on Human Rights on June 25, 1975, and commenced the instant action on June 26, 1975. Plaintiffs have therefore demonstrated their interest in being reinstated to the PD and in invalidating the discriminatory lay-offs of June 30, 1975.

Rule 23(b)(2). The defendants, in terminating the services of approximately 400 female Police Officers on June 30, 1975 and in failing to reinstate most of these female Police Officers on or before July 10, 1975, have acted on grounds generally applicable to the class, thereby making appropriate final relief with respect to the class as a whole.

WHEREFORE, it is respectfully requested that this Court enter an order permitting this action to be maintained as a class action, and ordering such other and further relief as to this Court may seem just and proper.

Sworn to before me this

27th day of May, 1976.

Peggy Beckwith

PEGGY BECKWITH
Notary Public, State of New York
No. 60-4624665
Qualified in Westchester County
Term Expires March 30, 1978

Supporting affidavit of Murray A. Gordon (summary judgment)

UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF NEW YORK

---------------------------------------X

BERALDINE L. ACHA and ARLENE M. EGAN, each individually and on behalf of all others similarly situated,

Plaintiffs,

-against-

ABRAHAM D. BEAME, individually and in his capacity as Mayor of the City of New York, MICHAEL J. CODD, individually and in his capacity as Police Commissioner of the New York City Police Department and THE CITY OF NEW YORK, as a public employer,

Defendants.

---------------------------------------X

AFFIDAVIT

Index No.
75 Civ. 3128
KTD

STATE OF NEW YORK)
) SS:-
COUNTY OF NEW YORK)

MURRAY A. GORDON, being duly sworn, deposes and says:

1. I am a member of the firm of MURRAY A. GORDON, P. C., attorneys for the plaintiffs and the class they represent in the above-entitled action. I submit this affidavit in support of plaintiff's motion for summary judgment, pursuant to Rule 56 of the Federal Rules of Civil Procedure, on behalf of fifty-four members of the class.

2. This action was commenced by the filing of a complaint on June 26, 1975 pursuant to Title VII of the Civil Rights Act of 1964, 42 U.S.C. §2000e et. seq., 42 U.S.C. §1983, and the Fourteenth Amendment to the United States Con-

stitution, all of which prohibit discrimination in employment based on sex.

3. Prior to the commencement of this action, on June 25, 1975 plaintiffs duly filed complaints with the New York City Commission on Human Rights and the United States Equal Employment Opportunity Commission. A copy of these complaints are annexed as Exhibits "D" and "E" to plaintiffs' amended complaint. Right to sue letters were issued to the two named plaintiffs by the Department of Justice on April 2, 1976. Copies of these letters are annexed as Exhibit "F" to plaintiffs' amended complaint.

4. In an order and judgment dated August 22, 1975, and entered September 2, 1975, this Court denied plaintiffs' application for a preliminary injunction and dismissed the instant action.

5. In an order and opinion dated February 19, 1976, and docketed as a judgment April 26, 1976, the United States Court of Appeals for the Second Circuit reversed the order and judgment of this Court, and remanded this action to this Court for further proceedings consistent with the opinion of the Court of Appeals, with costs to be taxed against the defendants.

6. In an order dated May 10, 1976, the United States Court of Appeals for the second Circuit denied defendants' petitions for rehearing and for rehearing en banc.

7. The Court of Appeals, in the aforesaid decision, held that if a female Police Officer ("FPO") who was laid off on June 30, 1975, solely for budgetary reasons, can show that, except for her sex, she would have been hired early enough to withstand the current layoffs, her layoff violates §703(a)(1) of Title VII [42 U.S.C. §2000e-2(a)(1)] since it was based on sexual discrimination.

8. The instant motion for summary judgment is brought for (i) forty-nine FPO's who, but for their sex, would have been appointed *via* the Police Trainee route early enough to acquire sufficient seniority to withstand the June 30, 1975 layoffs; and (ii) six FPO's (including one in the prior category) with documented, indisputable proof of entitlement, under the standards of proof established herein by the Second Circuit, to sufficient seniority to withstand the June 30, 1975 layoffs.

The Trainee Positions

9. On October 25, 1969, Examinations No. 9080 ("Exam 9080") and No. 9081 ("Exam 9081") were given, the former for the position of Patrolman/Police Trainee and the latter for the position of Patrolwoman. The questions on the two tests were identical. Females were not eligible to take and none took Exam 9080 (See Exhibit "B" attached to amended complaint). Candidates on Exam 9080 under 21 years of age when reached for appointment off the Exam 9080 list, were appointed as Trainees, and when, after such appointment, they attained 21 they were appointed Police Officers. During the 1970-1973 freeze no

Police Officers were appointed except via the described Police Trainee route.

10. As appears from records which have been made available to our firm by defendants, it is clear and documented that, but for their sex, not less than forty-nine members of the class represented by plaintiffs would have been appointed to the position of Police Trainee on or about May 8, 1970. As further appears from said records, persons who were appointed to the position of Police Trainee on or about May 8, 1970 were either not laid off on June 30, 1975 or were reinstated no later than July 10, 1975.

11. The FPO's listed in the following chart, which has been compiled from data which has been made available by defendants, took and passed Exam 9081 on October 25, 1969 with the score indicated, none below 84. As their dates of birth indicate, each FPO on the following chart was born after May 8, 1949 and was therefore less than 21 years of age on May 8, 1970:

CHART #1

Name	Score	Date of Birth
Alicia C. Parker	97	2-3-50
Charlene A. Davey	97	1-16-50
Catherine Braun	96	12-13-49
Margaret M. Moore	95	6-3-49
Mary A. Boyd	95	6-16-49
Karen A. Krizan	94	10-5-49
Laura M. Quintero	93	11-13-49
Kathleen Sammon	93	5-20-50
Margaret O'Shaughessy	93	1-18-50
Veronica M. Risi	92	12-10-49
Kerry A. Schreiner	92	10-25-49
Patricia A. Scarlett	92	2-11-50
Kathleen M. Fraher	91	7-13-50

Patricie A. Kehoe	91	11-21-49
Rosalyn Yellin	91	10-28-49
Carol S. Kranick	91	1-6-49
Monica L. Sullivan	90	6-7-50
Jane E. Deacy	90	7-26-50
Janet A. Guardino	90	8-1-50
Eleanor M. Nola	90	8-13-50
Valarie A. Doran	90	2-4-50
Anita Matusiak	89	2-3-50
Gertrude A. Campbell	89	11-11-49
Yvonne M. Mitchell	89	10-10-50
Barbara J. Keany	89	3-3-50
Linda A. Miglino	89	4-22-50
Janis L. Stenborg	89	5-19-49
Ruthann T. Pitaro	88	9-24-50
Diane B. Broccoli	88	11-2-49
Mary J. Yakonenko	88	7-27-49
Donna M. Jones	88	9-29-49
Ellen E. Firn	88	12-30-49
Catherine De La Rionda	88	2-3-50
June B. Donovan	87	6-5-50
Mary A. Ross	87	8-15-49
Patricia M. Doyle	87	11-18-49
Katherine Bridges	87	1-8-50
Maureen Collins	87	6-13-50
Theresa A. Brown	86	6-8-49
Carmen F. Cordova	86	8-6-49
Debra P. Ferrer	86	11-1-50
Christine O'Bremski	85	6-24-50
Maureen A. Houlihan	85	4-22-50
Mary M. Peters	85	9-15-49
Patricia A. Hear	84	8-28-50
Bernice Schaffer	84	7-7-50
June Lavian	84	4-21-50
Annette Spellen	84	10-25-49
Maria J. Zapata	84	9-13-50

12. According to the records submitted by defendants herein and examined by my office, it is not disputed that on May 8, 1970, approximately 125 men who had passed Exam 9080 with scores of 84 or better, and who were under 21 years of age on such date, were appointed to the position of Police Trainee. Men thus appointed were either not laid off on June 30, 1975 or were reinstated on or before July 10, 1975.

13. None of the women listed in Chart #1 attained a score on Exam 9081 lower than the score attained on the identical Exam 9080 by any of the aforesaid 125 men. But each of the FPO's listed in Chart #1 were appointed to the PD after the lifting of the hiring freeze in 1973 because they were not permitted to take Exam 9080. Therefore, all of said FPO's were laid off on or before June 30, 1975, and have not been reinstated, and none of the 125 Trainees later appointed Police Officers are laid off.

14. Each of the FPO's in Chart #1 demonstrated her eligibility and qualification for the position of Police Officer on or prior to her date of appointment.

15. Each of the aforesaid FPO's demonstrated and expressed her desire to become Police Officers on October 25, 1969 when she took and passed Exam 9081.

16. It is therefore clear and documented that the forty-nine FPO's listed in Chart #1 were in all respects eligible to have been appointed to the position of Police Trainee on May 8, 1970, and that, but for their sex, they would have been appointed to such title on or about May 8, 1970.

17. As further appears from records which have been disclosed by defendants, and as must be conceded by defendants, had the FPO's listed in Chart #1 been appointed on May 8, 1970, they would not have been laid off on June 30, 1975 or would have been reinstated on or before July 10, 1975.

18. The layoff of the aforesaid FPO's on June 30, 1975 and/or the failure of defendants to reinstate them on or before July 10, 1975 was in violation of §703(a)(1) of Title VII [42 U.S.C. §2000e-2(a)(1)], pursuant to the holding of the Court of Appeals in the instant action, since, but for their sex, they would have accumulated sufficient seniority to withstand the current layoffs.

19. The layoff of the aforesaid FPO's on June 30, 1975 and/or the failure of defendants to reinstate them on or before July 10, 1975 was also in violation of 42 U.S.C. §1983 and the Fourteenth Amendment to the United States Constitution.

20. There is no genuine or triable issue of material fact with respect to the illegality of the actions of defendants in laying off and failing to reinstate the forty-nine FPO's listed in Chart #1.

Other Documented Instances of Prior Instances of Discrimination under the Second Circuit Standards

21. In numerous instances FPO's can establish the expressed desire or intention to become Police Officers, prior to the date of their respective appointments in 1973, required by the decision of the Second Circuit herein. The date of such expression, viewed in conjunction with the next available PD examination which women were not eligible to take,

fixes the rightful seniority date of such FPO's and also, at a minimum, fixes their entitlement not to have been laid off on or about June 30, 1975 since males appointed on or before May 1970 were not laid off and/or have been reinstated, and a review of the pre-1969 examinations denied to women shows why the members of the class herein were improperly laid off in 1975.

22. Defendants have made available to my office the record of Patrolwomen and Patrolmen and/or Police Trainee examinations between 1964 and 1969. Two were given for Patrolwomen, No. 9968 on March 21, 1964 and No. 9081 on October 25, 1969. In that same period approximately 19 examinations were given for Patrolmen and/or Police Trainee, for which only men were eligible, as follows:

Title	Examination No.	Date of Written Test
Police Trainee	1134	March 21, 1964
Patrolman	9996	November 14, 1964
Police Trainee	1215	January 16, 1965
Patrolman	1382	
Patrolman	1506	October 16, 1965
Police Trainee	1455	March 12, 1966
Patrolman	1577	March 12, 1966
Patrolman	6013	June 11, 1966
Patrolman	6069	October 22, 1966
Patrolman	6083	January 21, 1967
Patrolman, Police-Trainee	6127	April 1, 1967
Patrolman, Police-Trainee	7017	June 3, 1967
Police Trainee	7046	November 4, 1967
Patrolman, Police-Trainee	7065	May 11, 1968
Patrolman, Police-Trainee	8046	July 20, 1968
Patrolman, Police-Trainee	8108	January 18, 1969
Patrolman	9019	April 5, 1969
Patrolman	9049	June 28, 1969
Patrolman, Police-Trainee	9080	October 25, 1969

23. As is more fully set out in the attached affidavits of PATRICIA W. BOYCE, MARY D. LENIHAN, BERNADETTE M. FOWLER, CLARA A. PALUMBO, CAROL A. GRACE, and CATHERINE DE LA RIONDA (who is also a member of the class of FPO's listed in Chart #1), the layoff of each of the aforesaid FPO's and/or the failure of defendants to reinstate them on or before July 10, 1975 was in violation of §703(a)(1) of Title VII, 42 U.S.C. §1983, and the Fourteenth Amendment to the United States Constitution. As is set out in the aforesaid affidavits, there is no genuine or triable issue of material fact with respect to the illegality of the action of the defendants in laying off and failing to reinstate the aforesaid six FPO's.

24. In the instance of each of the foregoing, consideration of the date of her documented statement of purpose to become a Police Officer in conjunction with the next available examination which she was not permitted to take solely because of her sex establishes that, but for her sex, she would have been appointed at such a time that her seniority would have withstood the June 30, 1975 layoffs and that she is entitled to summary judgment.

WHEREFORE, it is respectfully requested that plaintiffs' motion for summary judgment on behalf of the aforesaid forty-nine FPO's be granted, and that this Court:

i) enter a judgment declaring that the termination of the employment of the aforesaid FPO's on or about June

30, 1975 and/or the failure of the defendants to reinstate such FPO's on or before July 10, 1975, were in violation of Title VII of the Civil Rights Act of 1964, 42 U.S.C. §2000e et. seq., 42 U.S.C. &1983, and the Fourteenth Amendment to the United States Constitution;

ii) order the immediate reinstatement of each of the aforesaid fifty-four FPO's with full rights and benefits retroactive to the date of their layoff, or, in the alternative, grant each such FPO future pay equal to the amount they would receive upon reinstatement;

iii) award each of the aforesaid fifty-four FPO's back pay from the date of their termination until the date of their reinstatement;

iv) grant each of the aforesaid fifty-four FPO's costs and disbursements as well as reasonable attorney's fees; and

v) grant such other and further relief as to this Court may seem just and proper.

Murray A Gordon

MURRAY A. GORDON

Sworn to before me this
27th day of May, 1976.

Peggy Beckwith

PEGGY [illegible]
Notary Public, State of New York
No. 60-46[illegible]
Qualified in Westchester County
Term Expires March [illegible] 78

Supporting affidavit of Catherine Delarionda

UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF NEW YORK

---X

BERALDINE L. ACHA and ARLENE M. EGAN, each individually and on behalf of all others similarly situated,

Plaintiffs,

-against-

ABRAHAM D. BEAME, individually and in his capacity as Mayor of the City of New York, MICHAEL J. CODD, individually and in his capacity as Police Commissioner of the New York City Police Department and THE CITY OF NEW YORK, as a public employer,

Defendants.

---X

AFFIDAVIT

Index No.
75 Civ. 3128
KTD

STATE OF NEW YORK)
) SS:-
COUNTY OF NEW YORK)

CATHERINE DELARIONDA, being duly sworn, deposes and says·

1. I am a member of the class represented by plaintiffs in the above entitled action.

2. I was appointed as a Police Officer in the New York City Police Department (hereinafter "PD") on May 29, 1973.

3. My services with the PD were terminated on June 30, 1975 solely for budgetary reasons. I have not been reinstated.

4. My performance while serving as a Police Officer was at all times satisfactory.

5. I have been advised by counsel that the United States Court of Appeals for the Second Circuit has ruled that if a female Police Officer ("FPO") who was laid off on June 30, 1975 can show that, except for her sex, she would have been hired early enough to accumulate sufficient seniority to withstand the current layoffs, then her layoff violates §703(a)(1) of Title VII, 42 U.S.C. §2000 e-2(a)(1) since it was based on sexual discrimination. I submit this affidavit in support of my motion for summary judgment on the grounds that, but for the prior discriminatory acts of defendants herein, I would have been hired early enough to withstand the June 30, 1975 layoffs.

6. According to my counsel, the decision of the Court of Appeals permits a showing of discrimination to be based on proof of the earliest date that an FPO expressed the desire or intent to become a Police Officer. In my case it is indisputable that such an expression occurred not later than April, 1968.

7. On July 20, 1968, Examination No. 8046 ("Exam 8046") was given for the positions of Patrolman and Police Trainee in the PD.

8. The Notice of Examination for Exam 8046, a copy of which is annexed as Exhibit "CD-1", provided a candidate for the position of Police Trainee had to be at least 16 years of age on the date of the written test and at least 17 years of age on the date of appointment. The notice also provided that the examination was open only to men.

9. I was born on February 3, 1950, and was therefore 18 years of age on the date Exam 8046 was given.

10. In April 1968, I received an application form from the Department of Personnel to take Exam 8046 for the position of Police Trainee. I returned the aforesaid application to the Department of Personnel, and subsequently received an admission card for the examination. A copy of that admission card is annexed hereto as Exhibit "CD-2".

11. On July 20, 1968 I appeared at or before 9:00 A.M., as provided on the admission card, to take Exam 8046. The proctors for the examination did not permit me to take such examination solely on the grounds of my sex. A copy of the letter sent to me by a representative of the New

York City Department of Personnel, dated July 25, 1968, stating that Exam 8046 was open only to men, is annexed hereto as Exhibit "CD-3".

12. On August 7, 1968, I filed a complaint with the New York State Division of Human Rights charging the City of New York, the New York City Department of Personnel, and the New York City Police Department with an unlawful discriminatory practice on the grounds that I was denied admission to Exam 8046 solely on the basis of my sex. A copy of my complaint to the New York State Division of Human Rights is annexed hereto as Exhibit "CD-4".

13. On November 25, 1968, the New York State Division of Human Rights issued a determination of no probable cause to believe that an unlawful discriminatory practice had occurred. A copy of the Determination and Order, dated November 25, 1968, is annexed hereto as Exhibit "CD-5".

14. As appears from records which have been disclosed to my attorneys herein, persons who took and passed Exam 8046 on July 20, 1968 were appointed between June 30, 1969 and October 24, 1969.

15. It is, therefore, clear and documented that I expressed the desire and intention to become a Police Officer in 1968, and that, but for my sex, I would have taken and passed Exam 8046 and would have been appointed to the position of Police Trainee between June 30, 1969 and October 24, 1969.

16. The records herein show that the former Police Officer who is first on the preferred reinstatement list has an effective date of appointment of April 1, 1971. None of those appointed prior to that date have been and remain laid off by reason of the recent budgetary layoffs. Had I been appointed to the position of Police Trainee between June 30, 1969 and October 24, 1969, I would not have been laid-off on June 30, 1975; in any event, I would have been reinstated no later than July 10, 1975.

17. On October 25, 1969, I took and passed Examination No. 9081 ("Exam 9081") for the position of Policewoman, having attained a score of 88 on said examination.

18. On October 25, 1969, the same date on which I took Exam 9081, Examination No. 9080 ("Exam 9080") was given to men for the position of Patrolman and Police Trainee. The questions on these two examinations were identical.

19. According to the records submitted by defendants herein, on May 8, 1970, approximately 125 men who had passed Exam 9080 with scores of 84 or better, and who were under 21 years of age on such date, were appointed to the position of Police Trainee. Men thus appointed to the position of Police Trainee on May 8, 1970 were either not laid-off on June 30, 1975 or were reinstated no later than July 10, 1975.

20. On May 28, 1970, I was 20 years of age. I had graduated from Brentwood Senior High School in June 1968, and I obtained a valid motor vehicle operator's license in February, 1967. Except for my sex, I was eligible for appointment as a Police Trainee on that date.

21. At all times since June 1968, I was in good health, and was ready, willing, able and available to serve as a Police Trainee and/or Police Officer in the PD.

22. I was not appointed to the position of Police Trainee on May 8, 1970 solely on the basis of my sex.

23. I would not have been laid-off on June 30, 1975, or would have been reinstated no later than July 10, 1975 had I been appointed to the position of Police Trainee on May 8, 1970.

WHEREFORE, I respectfully request that the motion for summary judgment on my behalf in the instant action be granted.

Catherine De La Rionda
CATHERINE DELARIONDA

Sworn to before me this
day of May, 1976.

Carolyn B Young

CAROLYN B. YOUNG
Notary Public, State of New York
No. [illegible]
Qualified in [illegible] County
Commission Expires [illegible] 77

Exhibit 1 to affidavit of Catherine Delarionda

THE CITY OF NEW YORK
DEPARTMENT OF PERSONNEL
CITY CIVIL SERVICE COMMISSION

NOTICE OF EXAMINATION

No. 8016
PATROLMEN, POLICE TRAINEE (POLICE DEPARTMENT)

This examination is open only to men.

A single list will be established from this examination and appointments wil be made to either Patrolman or Police Trainee (Police Department) depending on age.

Police Trainee is a trainee class of positions. A Police Trainee will receive a regular appointment as a Patrolman on reaching his 21st birthday, or as shortly thereafter as practicable, without taking any further written or physical tests, provided he has a satisfactory record as trainee and provided he passes a medical test identical to the one given to Patrolman candidates.

Salary, Vacancies and Benefits (Patrolman): The entrance salary is $7,932 per annum at present. Patrolmen receive increments of $221 at the end of their first year, $551 at the end of their second year and $679 at the end of their third year in the Police Department. The salary reached through these increments is $9,383 per annum. In additon, there is an annual uniform allowance of $185, a holiday pay allowance of eleven days per year, a $180 contribution per man per year by the City to a welfare fund, and a $1 per day contribution per man by the City to an annuity fund. Vacancies occur from time to time.

Police Trainee (Police Department): The entrance salary is $4,000 per annum. There will be an increment of $240 per annum after each year of trainee service up to a maximum of four increments. There will be a considerable number of positions in the Police Department under this program.

Many benefits are, or may be, enjoyed by New York City employees. These benefits include generous annual leave, sick leave, membership in a liberal pension system, the Social Security System, a health insurance plan wholly paid for by the City of New York and the blood credit program.

Catherine De La Cionisa

Applications: *Filing Period* — Pre-application forms issued and received Monday through Friday from 9 a. m. to 5 p. m., except Thursday from 8.30 a. m. to 5.30 p. m. and Saturday from 9 a. m. to 12 noon, from June 5, 1968 through June 28, 1968.

Pre-application forms are obtainable free either by the applicant in person or by his representative at the Application Section of the Department of Personnel at 49 Thomas Street, New York, N. Y. 10013. They will also be mailed on request provided that the request to the above section and address is accompanied by a stamped (6 cents) self-addressed 9½-inch envelope for each application requested. All such mail requests must be postmarked not later than June 21, 1968. A pre-application form submitted by mail must be postmarked no later than the last date for receipt of pre-application forms.

Pre-application forms are also issued in person (but not received) at all branches of the public library systems in the various boroughs in New York City, Mount Vernon, New Rochelle, White Plains and Yonkers.

Regular applications will be issued and accepted for filing in person only at the time and place of the written test.

Date and Place of Test: The written test is expected to be held July 20, 1968. This date is tentative only and may be changed if circumstances so demand.

Promotion Opportunities: The Administrative Code provides that Sergeants shall be selected from among Patrolmen of the First Grade. Sergeants are eligible for promotion examination to Lieutenant; Lieutenants are eligible for promotion examination to Captain.

Time in service as a police trainee shall not be considered as service in the uniformed force for pension or retirement purposes, nor in computing seniority in a promotion examination, nor in granting advancement in grade as a Patrolman.

Age Requirements (Patrolman): The Administrative Code provides that only persons shall be appointed Patrolman who shall be on the date of the written test less than 29 years of age; and the Public Officers Law provides that persons shall be at least 21 years of age at the time of appointment.

Exception: All persons who were engaged in military duty, as defined in Section 243 of the Military Law, subsequent to July 1, 1940, may deduct the length of time, not exceeding a total of six years, which they spent in such military duty from their actual age in determining their eligibility (Sub. 10a, Section 243, Military Law).

Police Trainee: Candidates must be at least 16 years of age on the date of the written test and at least 17 years of age at time of appointment.

At the time of investigation, applicants will be required to submit proof of date of birth by transcript of record of the Bureau of Vital Statistics or other satisfactory evidence. Any wilful misstatement may be cause for disqualification.

Minimum Requirements: At the time of appointment: (a) graduation from a four-year senior high school; or (b) possession of a high school equivalency diploma; or (c) certification of having passed the New York State high school equivalency examination; or (d) an acceptable G.E.D. certificate issued by the Armed Forces.

At the time of appointment, applicants must be United States citizens.

Applicants must not be less than 5 feet 7 inches (bare feet) in height and must approximate normal weight for height. Required vision, 20/30 in each eye separately, without glasses.

At the time of appointment as a Patrolman, residence in New York City, or in Nassau, Westchester, Suffolk, Orange, Rockland, or Putnam Counties is required. Also, at the time of appointment as a Patrolman, possession of a valid motor vehicle operator's license is required.

Proof of good character will be an absolute prerequisite to appointment. The following are among the factors which would ordinarily be cause for disqualification: (a) conviction of a misdemeanor or an offense, the nature of which indicates lack of good moral character or disposition toward violence or disorder; (b) repeated conviction of an offense, where such convictions indicate a disrespect for the law; (c) repeated discharge from employment where such discharges indicate poor performance or inability to adjust to discipline; (d) addiction to narcotics or excessive use of alcoholic beverages; (e) discharge from the Armed Forces other than the standard honorable discharge. In accordance with the provisions of the Administrative Code, persons convicted of a felony are not eligible for positions in the uniformed forces of the Police Department. In addition, the rules of the City Civil Service Commission provide that no person convicted of petit larceny, or who has been dishonorably discharged by the Armed Forces shall be examined, certified or appointed as a patrolman.

The Police Commissioner has the right to appoint one out of three on each certification.

The rules of the City Civil Service Commission provide that no name shall be certified more than three times to the same appointing officer for the same or similar position, unless at such officer's request.

Those appointed as probationary Patrolman must serve a probationary period as provided in the Rules of the City Civil Service Commission existing at the time of appointment.

A police trainee will not be considered a member of the uniformed force or a peace officer.

Duties of Patrolman: To perform general police duties in the various branches of the department; to perform all additional functions for the rank prescribed by relevant laws, Rules and Procedures, orders or directives of the Police Department; and to perform special duties or assignments as directed by the Police Commissioner in his discretion.

Duties of Police Trainee: Following orientation and training at the Police Academy, performs, under direct supervision, routine non-law enforcement tasks in Police Headquarters or field units; performs related work.

Examples of Typical Tasks (Police Trainee): Assists precinct personnel in the preparation of records, documents, correspondence, reports, filing, typing, etc., assists precinct detectives in a clerical capacity; assists members of specialized units in their clerical tasks; operates switchboards.

Tests: Written, weight 100, 75% required.

The written test will be of the multiple-choice type and will be designed to test the candidates' intelligence, initiative, judgment and capacity to learn the work of a police trainee and a patrolman. It may include questions on police situations, reading comprehension, arithmetic reasoning and vocabulary.

Candidates who pass the written test will be required to pass a qualifying medical test and a qualifying physical test. No second opportunity will be given to candidates who fail the qualifying physical test; or who fail to appear for the qualifying physical test, except those on active military duty.

The physical test will be designed to test the strength, agility, and power of candidates. Candidates will take the physical tests at their own risk of injury, although every effort will be made to safeguard them. Medical examination will be required prior to the physical test and the Department of Personnel reserves the right to exclude from the physical test any candidate who is found medically unfit. Candidates will be required to achieve a minimum mark of 70% or higher on the physical test in order to qualify. Medical and physical requirements as posted on the Department of Personnel's Bulletin Board must be met.

Candidates shall be rejected for any deficiency, abnormality or disease that tends to impair health or fitness. Such causes for rejection include but are not limited to defective vision, heart and lung diseases, hernia, paralysis and defective hearing. A history of any psychoneurotic disorder may disqualify. Persons must be free from such physical or personal abnormalities or deformities as to speech and appearance as would handicap them in the performance of their duties as a Patrolman.

Candidates who fail to attain the pass mark set for any test, subject or part of the examination shall be deemed to have failed the examination and no further test, subject, or part of the examination shall be rated.

Candidates are warned to make full and complete statements on their application blanks and medical questionnaires. Misrepresentation is ground for disqualification.

The pertinent sections of the General Examination Regulations are also to be considered part of this notice.

DEPARTMENT OF PERSONNEL, SOLOMON HOBERMAN, Personnel Director; GEORGE HENRY, JR., Secretary. j5,11

Exhibit 2 to affidavit of Catherine Delarionda

THE CITY OF NEW YORK — DEPARTMENT OF PERSONNEL DP-300C (1-68)

PRE-APPLICATION FOR OPEN COMPETITIVE CIVIL SERVICE EXAMINATION

TITLE OF EXAMINATION Patrolman Trainee (Police)

INSTRUCTIONS: (1) Print above the exact title of the examination. (2) Print your name and address on the other side of this card. (3) File this card in person or insert it in a stamped envelope and mail to DEPARTMENT OF PERSONNEL, 49 Thomas Street, New York, N. Y. 10013. (Do NOT file this card unless the examination is **NOW** open for filing.) **DO NOT BEND OR FOLD THIS CARD. DO NOT WRITE BELOW.**

EXAM NO. 8046 PATROLMAN, POLICE TRAINEE (P.D.)

JULY 20, 1968 9:00 A.M.

JAMAICA HIGH SCHOOL
168th STREET AND GOTHIC DRIVE, JAMAICA, NEW YORK
IND SUBWAY (QUEENS LINE) TO 169th STREET OR BMT
JAMAICA LINE TO 168th STREET. WALK TO SCHOOL
ONE SESSION OF ABOUT 3½ HOURS. BRING PEN AND SHARPENED
NO. 2 PENCIL WITH ERASER. BRING THIS CARD WITH YOU.

323M-109089(68) 346

THE CITY OF NEW YORK
DEPARTMENT OF PERSONNEL
49 THOMAS STREET
NEW YORK, N. Y. 10013

c.D. 2

NEW YORK JUL 11 68

U.S. POSTAGE .05 cc-9960

PRINT YOUR NAME AND ADDRESS BELOW

Catherine
[redacted] DeLaRionda
1540 No. Gardiner Dr.
Bayshore, N.Y. 11706
ZIP NO.

Exhibit 3 to affidavit of Catherine Delarionda

A 211

THE CITY OF NEW YORK
DEPARTMENT OF PERSONNEL–CITY CIVIL SERVICE COMMISSION
220 CHURCH STREET, NEW YORK, N.Y. 10013 ■ TELEPHONE:

July 25, 1968

Miss Catherine De LaRionda
1540 North Gardiner Drive
Bayshore, N. Y. 11706

Re: Exam. No. 8046 Patrolman, Police Trainee (P.D.)

Dear Miss De LaRionda:

We are enclosing a copy of the official announcement for the above examination which states that the examination is open only to men.

We are sorry for any inconvenience you may have experienced.

Very truly yours,

F. Viola

F. Viola, P.E.
Director of Examinations

enc.

Exhibit 4 to affidavit of Catherine Delarionda

STATE OF NEW YORK . EXECUTIVE DEPARTMENT

A 212

DIVISION OF HUMAN RIGHTS

on the complaint of

CATHERINE DELARIONDA Complainant,

against

CITY OF NEW YORK, DEPARTMENT OF PERSONNEL & POLICE DEPARTMENT

Respondent.

COMPLAINT NO.
DM 10-27-68

New address:
127-23 Hawtree Creek R
Richmond Hill
Queens, Ny 11420

I, Catherine DeLaRionda

residing at 1540 North Gardenia Ln., Bay Shore, N.Y. Tel No. MO-6-5324

charge CITY OF NEW YORK, DEPARTMENT OF PERSONNEL AND POLICE DEPARTMENT

Tel No. (212) 566-8720 223-2000

whose address is 55 Thomas St. New York, N.Y. / 240 Centre St., New York, N.Y.

with an unlawful discriminatory practice relating to employment on or about July 20, 1968 and continuing

by denying me participation in a training program

because of my AGE ( ), RACE ( ), CREED ( ), COLOR ( ), NATIONAL ORIGIN ( ), SEX (X).

The particulars are:

1. In April, 1968, I applied for admission to the John J. College of Criminal Justice, East 20th Street, New York, New York. I had been notified that I would have to have some prior law enforcement experience in order to qualify for admission to this college.

2. So as to obtain the necessary requirements for admission to John J. College, I applied for the police trainee examination which was announced by the City of New York Personnel Department. After filing my application I was notified by the Department of Personnel to report to Jamaica High School for the examination. On July 20, 1968 when I appeared at the place of examination I noted that I was the only female but nevertheless was intent on taking the test and thus qualifying for the police trainee course.

A 213

Complainant: CATHERINE DELARIONDA **Complaint No.** ____________

Respondent: CITY OF NEW YORK, DEPARTMENT OF PERSONNEL & POLICE DEPARTMENT

3. I was not however, permitted to take the test because as explained to me by a representative from the Department of Personnel the test is not open to females.

4. I am a female. Based upon the above I charge the City of New York, Department of Personnel and Police Department with discriminating against me by denying me participation in a training program because of my sex in violation of the New York State Human Rights Law.

I have not commenced any civil, criminal or administrative action or proceeding in any court or administrative agency based upon the same grievance.

STATE OF NEW YORK)
COUNTY OF Suffolk) ss:

Catherine De La Rionda
(Signature of Complainant)

CATHERINE DELARIONDA, being duly sworn, deposes and says: that he is the Complainant herein; that he has read the foregoing complaint and knows the contents thereof; that the same is true of h own knowledge except as to the matters therein stated on information and belief; and that as to those matters he believes the same to be true.

Subscribed and sworn to before me
this 7 day of [illegible]

HAGOMAN
NOTARY PUBLIC
[illegible]

Catherine De La Rionda
(Signature of Complainant)

Exhibit 5 to affidavit of Catherine Delarionda

DETERMINATION AND ORDER AFTER INVESTIGATION

Case No. CS-16687-68: Catherine DeLaRionda vs. The City of New York Department of Personnel; and the City of New York Police Department

- -

On August 7, 1968, Catherine DeLaRionda, who is a female, filed a verified complaint with the State Division of Human Rights charging the above-named respondents with an unlawful discriminatory practice relating to employment, by denying her a job opportunity because of her sex, in violation of the Human Rights Law of the State of New York.

After investigation, the Division of Human Rights has determined that there is no probable cause to believe that the respondents have engaged or are engaging in the unlawful discriminatory practice complained of. At a conference the complainant was given full opportunity for discussion of the above action prior to the issuance of this determination.

Upon the foregoing, the complaint is ordered dismissed and the file is closed.

The complainant or any party to the proceeding before the Division may appeal this order to the Human Rights Review Board, 270 Broadway, New York, New York 10007, by filing a notice of appeal within fifteen (15) days after the date of the mailing of this order.

Dated: NOV [illegible]

STATE DIVISION OF HUMAN RIGHTS

By: ______________________

Robert J. Mangum
Commissioner

d

A 215

TO: Miss Catherine DeLaRionda
1540 North Gardenior Drive
Bayshore, New York

The City of New York
Department of Personnel
220 Church Street
New York, New York 10013

Attn: Hon. Solomon Hoberman, Personnel Director

The City of New York
Police Department
240 Centre Street
New York, New York

Attn: Hon. Howard R. Leary, Commissioner

Supporting affidavit of Patricia Boyce

UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF NEW YORK
---X
BERALDINE L. ACHA and ARLENE M. EGAN, :
each individually and on behalf of
all others similarly situated, :

Plaintiffs, :

-against- : **AFFIDAVIT**

ABRAHAM D. BEAME, individually and : Index No.
in his capacity as Mayor of the City 75 Civ. 3128
of New York, MICHAEL J. CODD, individually : KTD
and in his capacity as
Police Commissioner of the New :
York City Police Department and
THE CITY OF NEW YORK, as a public :
employer,
:
Defendants.
---X

STATE OF NEW YORK)
) SS:-
COUNTY OF NEW YORK)

PATRICIA W. BOYCE, being duly sworn, deposes and says:

1. I am a member of the class represented by plaintiffs in the above entitled action.

2. I was appointed as a Police Officer in the New York City Police Department (hereinafter "PD") on May 29, 1973.

3. My services with the PD were terminated on June 30, 1975 solely for budgetary reasons. I have not been reinstated.

4. My performance while serving as a Police Officer was at all times satisfactory.

5. I have been advised by counsel that the United States Court of Appeals for the Second Circuit has ruled that if a female Police Officer ("FPO") who was laid off on June 30, 1975 can show that, except for her sex, she would have been hired early enough to accumulate sufficient seniority to withstand the current layoffs, then her layoff violates §703(a)(1) of Title VII, 42 U.S.C. §2000 e-2(a)(1) since it was based on sexual discrimination. I submit this affidavit in support of my motion for summary judgment on the grounds that, but for the prior discriminatory acts of defendants herein, I would have been hired early enough to withstand the June 30, 1975 layoffs.

6. According to my counsel, the decision of the Court of Appeals permits a showing of discrimination to be based on proof of the earliest date that an FPO expressed the desire or intent to become a Police Officer. In my case it is indisputable that such an expression occurred not later than 1963.

7. In approximately 1960 I first called the Department of Personnel requesting information concerning an examination for the position of Police Trainee. I was informed that this position was only open to men.

8. On or about March 21, 1964, Examination No. 9968 ("Exam 9968") for the position of Policewoman was held.

9. I filed an application for Exam 9968 in 1963, and I took said exam on the aforesaid date.

10. I obtained a score of approximately 74 on Exam 9968, and therefore did not pass said exam.

11. In or about 1964, after I had taken Exam 9968, I called the Department of Personnel concerning future examinations for the position of Policewoman. I was informed that no examinations would be open to women for awhile as there were quotas limiting the number of women in the PD.

12. On February 2, 1965, I wrote a letter to the Department of Personnel requesting further information concerning examinations for the position of Policewoman, and protesting the quota limiting the number of women who could serve in the PD. A copy of this letter is annexed hereto as Exhibit "PB-1".

13. I never received a response to the aforesaid letter.

14. I called the Department of Personnel in 1966, inquiring about examinations for the position of Policewoman. I was informed that there would be an examination held for the position of Patrolman only, and that I would not be eligible to take such exam solely on the grounds that I was a woman.

15. On October 25, 1969, I took and passed Examination No. 9081 ("Exam 9081") for the position of Policewoman.

16. It had been my desire to become a police officer for at least thirteen years prior to my appointment in 1973. In addition to the incidents outlined heretofore, my desire to become a police officer is documented in my 1962 high school yearbook, which lists my intended occupation as "Policewoman." A copy of the section of the aforesaid yearbook documenting such desire is annexed hereto as Exhibit "PB-2".

17. I was born on August 11, 1943. I graduated from Thomas Jefferson High School in Brooklyn, New York in January 1962. At all times since 1964, I have had a valid motor vehicle operator's license.

18. At all times since 1964 I have been in good health, was between the ages of 21 and 29, and been ready, willing, able and available to serve as a Police Officer in the P.D.

19. As appears from records which have been disclosed to my attorneys, herein, there were approximately fourteen examinations for the position of Patrolman given between the date Exam 9968 was given and October 25, 1969. The first such examination was given on or about November 14, 1964.

20. Had examinations held during the aforesaid interval for appointment to the PD been open to women, and had I not been discriminatorily denied the right to take such exams solely on the grounds of sex, I would have taken and passed such an examination.

21. Had such examinations been open to women, I would have been appointed to the PD no later than 1969.

22. Had I been appointed to the PD prior to or during 1969, I would have accrued sufficient seniority to withstand the June 30, 1975 layoff, or would have been reinstated no later than July 10, 1975.

WHEREFORE, I respectfully request that the motion for summary judgment on my behalf in the instant action be granted.

Patricia W. Boyce
PATRICIA W. BOYCE

Sworn to before me
this 7 day of May, 1976

Carolyn B Young

CAROLYN B. YOUNG
Notary Public, State of New York

Exhibit 1 to affidavit of Patricia Boyce

A 221

83-35 159th. Street
Jamaica, New York

February 2, 1965

N.Y.C. Department of Personnel
55 Thomas Street
New York, New York

Dear Sirs:

I am writing to request information in reference to the next N.Y.C. Police Department examination and to express my dismay about the fact that the City of New York does not give frequent exams for Policewoman as there are for Patrolman. I also feel it is completely unjust to have a quota for Policewomen, because women can be affective in all areas of police work as well as the men.

Therefore, I would greatly appreciate it if you would inform me of the next Police examination.

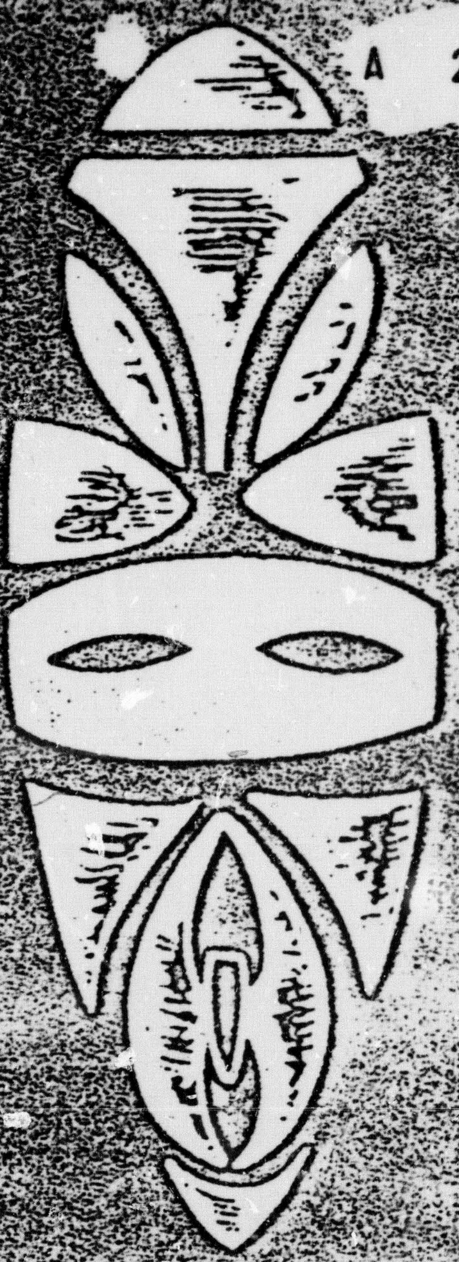
Thanking you for your cooperation.

Yours truly,

Patricia Maria Whalen

Exhibit 2 to affidavit of Patricia Boyce

A 222



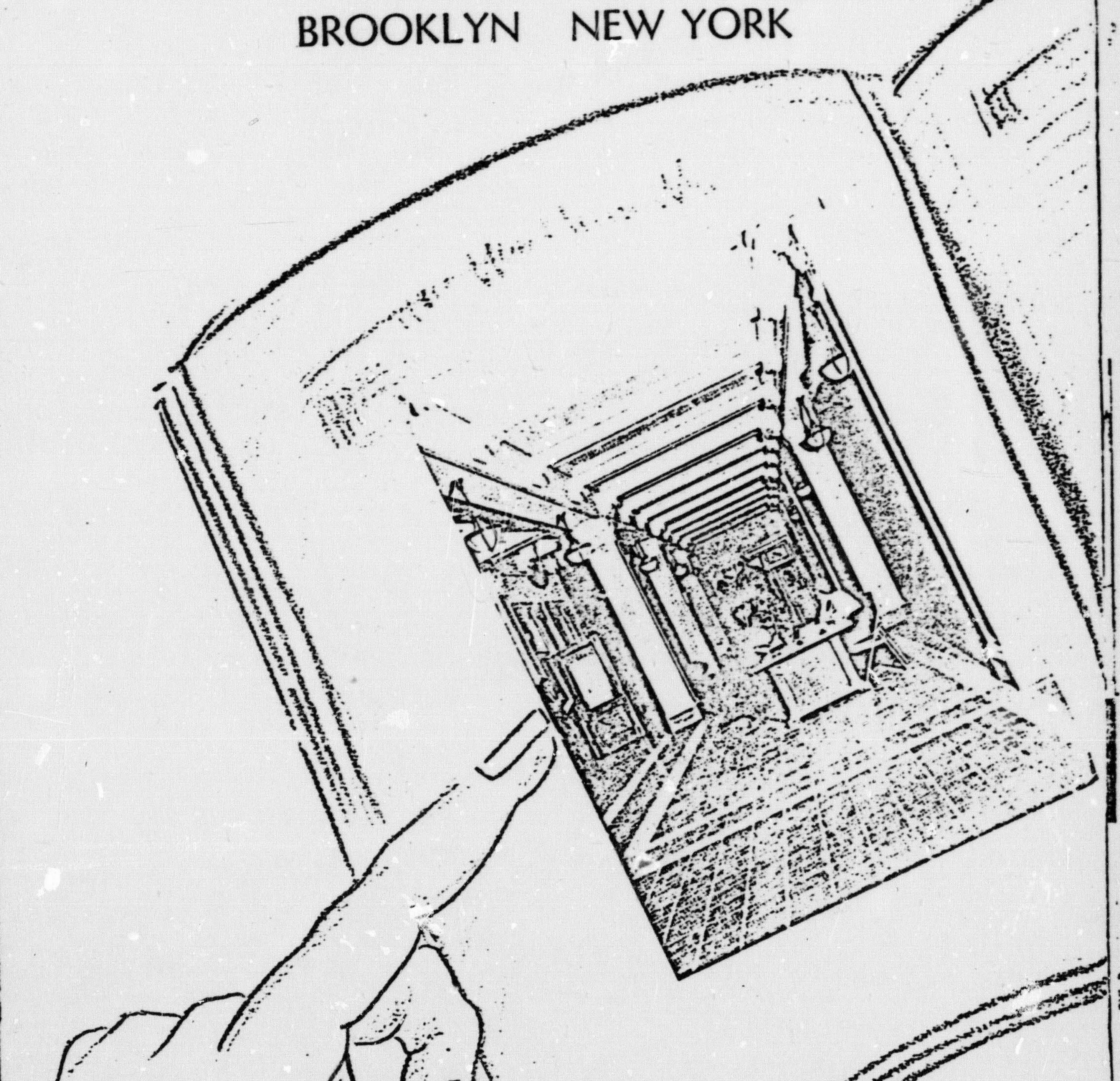
1962

AURORA

A 223

THOMAS JEFFERSON HIGH

BROOKLYN NEW YORK



SCHOOL

A 224

1962

AURORA

SAUL TORRES
294 Sackman Street
Printer

JULIAN WIDOM
596 Van Siclen Avenue
Brooklyn *Teacher*
Class Pres. (2 terms), P.M. Pres. Council, Library Squad, Times Rep.

NEREIDA TROCHE
395 Livonia Avenue

ALMA WILLIAMS
293 Dumont Avenue
Ohio Hall State Col. *English Teacher*
Chorus (3 years), Infirmary Sec. (2 terms)

MARILYN TUCK
1580 E. 102 Street
Brooklyn *Teacher*
Arista, Jeffersonian Feature Ed., Service Council, AM President's Council

KERMIT WILLIAMS
203 Christopher Street

SUSAN UDOVIN
1487 St. John's Place
Com. Col. *Legal Stenographer*
Co-Capt. Cheerleaders (5 terms), Hostess Club (3 terms), Attendance Office

LAURENCE WOHL
762 Miller Avenue
Brooklyn *Doctor*
Biology Lab Squad (5 terms), Service Council (2 terms), Swimming Team, Student Patrol

CECILE WASHINGTON
1574 Lincoln Place
C.C.N.Y. *Biologist*
Sec. to Dean of Girls

RENEE WORONOFF
180 Wortman Avenue
Secretary

RICHARD WASHINGTON
267 Osborn Street
Postal Carrier

GEORGE WRIGHT
252 Osborn Street
Bio. Lab. Messenger, Student Patrol, Metal Shop Asst.

MARIAN WEINER
385 Vermont Street
Brooklyn *Teacher*
Art Editor of Jeffersonian, Arista, Assistant to Alumni Association

MELVIN YOUNG
27 Bristol Street
Teacher

PATRICIA WHALEN
516 Sutter Avenue
Policewoman
President of Official Class

STEVEN ZACHOFSKY
628 Schenck Avenue
Com. Col. *Electrician*

Supporting affidavit of Mary Lenihan

UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF NEW YORK
---X

BERALDINE L. ACHA and ARLENE M. EGAN, :
each individually and on behalf of
all others similarly situated, :

Plaintiffs, :

-against- : **AFFIDAVIT**

ABRAHAM D. BEAME, individually and : Index No.
in his capacity as Mayor of the City 75 Civ. 3128
of New York, MICHAEL J. CODD, in- : KTD
dividually and in his capacity as
Police Commissioner of the New :
York City Police Department and
THE CITY OF NEW YORK, as a public :
employer,
:

Defendants.
---X

STATE OF NEW YORK)
) SS:-
COUNTY OF NEW YORK)

MARY D. LENIHAN, being duly sworn, deposes and says:

1. I am a member of the class represented by plaintiffs in the above entitled action.

2. I was appointed as a Police Officer in the New York City Police Department (hereinafter "PD") on August 31, 1973.

3. My services with the PD were terminated on June 30, 1975 solely for budgetary reasons. I have not been reinstated.

4. My performance while serving as a Police Officer was at all times satisfactory.

5. I have been advised by counsel that the United States Court of Appeals for the Second Circuit has ruled that if a female Police Officer ("FPO") who was laid off on June 30, 1975 can show that, except for her sex, she would have been hired early enough to accumulate sufficient seniority to withstand the current layoffs, then her layoff violates §703(a)(1) of Title VII, 42 U.S.C. §2000 e-2(a)(1) since it was based on sexual discrimination. I submit this affidavit in support of my motion for summary judgment on the grounds that, but for the prior discriminatory acts of defendants herein, I would have been hired early enough to withstand the June 30, 1975 layoffs.

6. According to my counsel, the decision of the Court of Appeals permits a showing of discrimination to be based on proof of the earliest date that an FPO expressed the desire or intent to become a Police Officer. In my case it is indisputable that such an expression occurred not later than June 10, 1965.

7. On approximately January 18, 1965, I went to the New York City Department of Personnel to inquire concerning employment as a Police Officer. In response to my inquiry, I was sent the Notice of Examination for Examination No. 1382 for the position of Patrolman.

8. On June 10, 1965, I wrote a letter to the Department of Personnel indicating my interest in becoming a Police Officer, and complaining of the discriminatory hiring practices in appointment to the PD based on sex. A copy of this letter is annexed hereto as Exhibit "ML-1".

9. On March 12, 1966, Examination No. 1455 ("Exam 1455") was given for the position of Police Trainee. The filing dates for Exam 1455 were from November 3, 1965 to November 30, 1965.

10. Upon information and belief, men were qualified to take Exam 1455 if they were at least 16 years of age on the examination date, and if they were between the ages of 17 and 21 on the date of appointment.

11. I was born on September 22, 1946, and was therefore 19 years of age on the date Exam 1455 was given.

12. As appears from records which have been made available to my attorneys, persons who took and passed

Exam 1455 were appointed to the position of Police Trainee between approximately November 7, 1966 and June 23, 1967.

13. Between November 7, 1966 and June 23, 1967, I was 20 years old, and was therefore qualified to be appointed to the position of Police Trainee.

14. It is, therefore, clear and documented that I expressed a desire to join the PD on June 10, 1965, and that, but for my sex, I would have taken and passed Exam 1455, and would have been appointed to the position of Police Trainee between approximately November 7, 1966 and June 23, 1967.

15. Had I been appointed to the PD as a Police Trainee between November 7, 1966 and June 23, 1967, I would not have been laid off on June 30, 1975, and even if I had been laid off on such date, I would have been reinstated no later than July 10, 1975.

16. On October 25, 1969, I took and passed Examination No. 9081 ("Exam 9081") for the position of Policewoman.

17. Between March 12, 1966, the date of Exam 1455, and October 25, 1969, the date on which I took Exam 9081, there were approximately ten examinations given for

the position of Patrolman. All such examinations were open only to men.

18. During the aforesaid period, I was 19 years of age or older. As appears from records which have been made available to my attorneys, except for my sex, I would have been eligible to take at least nine of these examinations.

19. I graduated from William Cullen Bryant High School in September 1964.

20. In 1969, in preparation for my appointment to the PD, I took and passed the road test on my first attempt, and obtained my motor vehicle operator's license. Had it been necessary for me to detain such license at an earlier date, I would and could have done so.

21. At all times since June 10, 1965, I have been in good health, and have been ready, willing, able, and available to serve as a Police Trainee and/or Police Officer in the PD.

22. I was required to wait a period in excess of four years and four months from the time of my documented inquiry in 1965 before I was permitted to take an examination for appointment as a Police Officer, solely on the grounds of sex.

23. I was required to wait a period in excess of eight years from time of my documented inquiry on June 10, 1965

until my appointment on August 31, 1973 solely on the grounds of sex.

24. Had I been permitted to take any one of the approximately seven or eight examinations given for the position of Patrolman between June 11, 1966 and January 18, 1969 (excluding two examinations given later in 1969 from which appointments were not made until 1973), I would have accumulated sufficient seniority to withstand the June 30, 1975 layoff, or would have been reinstated no later than July 10, 1975.

WHEREFORE, I respectfully request that the motion for summary judgment on my behalf in the instant action be granted.

Mary D. Lenihan
MARY D. LENIHAN

Sworn to before me
this 7th day of May, 1976

JAN STIGLITZ
Notary Public, State of New York
No. 31-4624923
Qualified in New York County
Term Expires March 30, 1978

Exhibit 1 to affidavit of Mary Lenihan

Woodside, N. Y.
June 10, 1965

A 232

New York City Department of Personnel
55 Thomas Street
New York, N.Y.

Dear Sir:

I have been reading the Civil Service paper The Chief each week since graduation from high school hoping to find an article announcing the opening of a test for the position of Policewoman. All I find are announcements for Policemen and Police Trainees, which I am told are open only to men. I find this to be very unfair. I feel that women can do police work as good as men and Policewomen used as decoys have shown that they can do police work well. Since the job of a Police Trainee is mainly clerical and leads to appointment as patrolman I fail to see why women are not permitted to take the test for Police Trainee leading to an appointment as policewoman. I also fail to see why policewomen are not appointed in equal numbers to policemen.

Sincerely,

Mary D. Lenihan

Supporting affidavit of Bernadette Fowler

UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF NEW YORK

---X

BERALDINE L. ACHA and ARLENE M. EGAN, each individually and on behalf of all others similarly situated, Plaintiffs, -against- ABRAHAM D. BEAME, individually and in his capacity as Mayor of the City of New York, MICHAEL J. CODD, individually and in his capacity as Police Commissioner of the New York City Police Department and THE CITY OF NEW YORK, as a public employer, Defendants.	:	AFFIDAVIT Index No. 75 Civ. 3128 KTD

---X

STATE OF NEW YORK)
) SS:-
COUNTY OF NEW YORK)

BERNADETTE M. FOWLER, being duly sworn, deposes and says:

1. I am a member of the class represented by plaintiffs in the above entitled action.

2. I was appointed as a Police Officer in the New York City Police Department (hereinafter "PD") on November 19, 1973.

3. My services with the PD were terminated on June 30, 1975 solely for budgetary reasons. I have not been reinstated.

4. My performance while serving as a Police Officer was at all times satisfactory.

5. I have been advised by counsel that the United States Court of Appeals for the Second Circuit has ruled that if a female Police Officer ("FPO") who was laid off on June 30, 1975 can show that, except for her sex, she would have been hired early enough to accumulate sufficient seniority to withstand the current layoffs, then her layoff violates §703(a)(1) of Title VII, 42 U.S.C. §2000 e-2(a)(1) since it was based on sexual discrimination. I submit this affidavit in support of my motion for summary judgment on the grounds that, but for the prior discriminatory acts of defendants herein, I would have been hired early enough to withstand the June 30, 1975 layoffs.

6. According to my counsel, the decision of the Court of Appeals permits a showing of discrimination to be based on proof of the earliest date that an FPO expressed the desire or intent to become a Police Officer. In my case it is indisputable that such an expression occurred not later

than July 10, 1965.

7. On July 10, 1965, I sent a postcard to the Department of Personnel indicating and expressing my desire to become a member of the PD. A copy of this postcard is annexed hereto as Exhibit "BF-1".

8. On March 12, 1966, Examination No. 1557 was given for the position of Patrolman, the filing dates for Exam 1557 were from December 21, 1965 to February 25, 1966.

9. Upon information and belief, men were qualified to take Exam 1557 if they were at least 20 years of age on the date of filing and at least 21 years of age on the date of appointment.

10. I was born on February 21, 1946, and therefore turned 20 years of age during the period of filing for Exam 1557.

11. As appears from records which have been made available to my attorneys, most or all persons who took and passed Exam 1557 were appointed to the position of Patrolman on March 1, 1967.

12. On March 1, 1967, I was 21 years of age, and was therefore qualified to be appointed to the position of Police Officer on that date. (Please note, persons entering the

PD at such time were actually referred to as Patrolman, Police Trainee or Policewoman).

13. It is, therefore, clear and documented that I expressed a desire to join the PD on July 10, 1965, and that, but for my sex, I would have taken and passed Exam 1557, and would have been appointed to the position of Police Officer on or about March 1, 1967.

14. Had I been appointed to the position of Police Officer on or about March 1, 1967, I would not have been laid off on June 30, 1975, and even if I had been laid off on such date, I would have been reinstated no later than July 10, 1975.

15. On October 25, 1969, I took and passed Examination No. 9081 for the position of Policewoman.

16. Between March 12, 1966, the date of Exam 1557 and October 25, 1969, the date on which I took Exam 9081, there were approximately ten examinations given for the position of Patrolman. All such examinations were open only to men.

17. During the aforesaid period, I was 20 years of age or older. As appears from records which have been made available to my attorneys, except for my sex, I would have

been eligible to take all ten such examinations.

18. I graduated from St. Helena's High School in 1964. At all material times herein, I was in possession of a valid motor vehicle operator's license.

19. At all times since July 10, 1965, I have been in good health, and have been ready, willing, able, and available to serve as a Police Officer.

20. I was required to wait a period in excess of 4 years and three months from the time of my documented inquiry in 1965 before I was permitted to take an examination for appointment as a Police Officer, solely on the grounds of sex.

21. I was required to wait a period in excess of eight years from the time of my documented inquiry on July 10, 1965 until my appointment on November 19, 1973, solely on the grounds of sex.

22. Had I been permitted to take any one of the approximately eight examinations given for the position of Patrolman between June 11, 1966 and January 18, 1969, (excluding two examinations given later in 1969 from which appointments were not made until 1973), I would have accumulated sufficient seniority to withstand the June 30, 1975 layoff, or would have

been reinstated no later than July 10, 1975.

WHEREFORE, I respectfully request that the motion for summary judgment on my behalf in the instant action be granted.

Bernadette Fowler
BERNADETTE M. FOWLER

Sworn to before me

this 10th day of May, 1976

JAN STIGLITZ
Notary Public, State of New York
No. 31-4624923
Qualified in New York County
Term Expires March 30, 1978

Exhibit 1 to affidavit of Bernadette Fowler

5¢ U.S. POSTAGE

DEPARTMENT OF PERSONNEL

55 THOMAS STREET

NEW YORK, N. Y. 10013

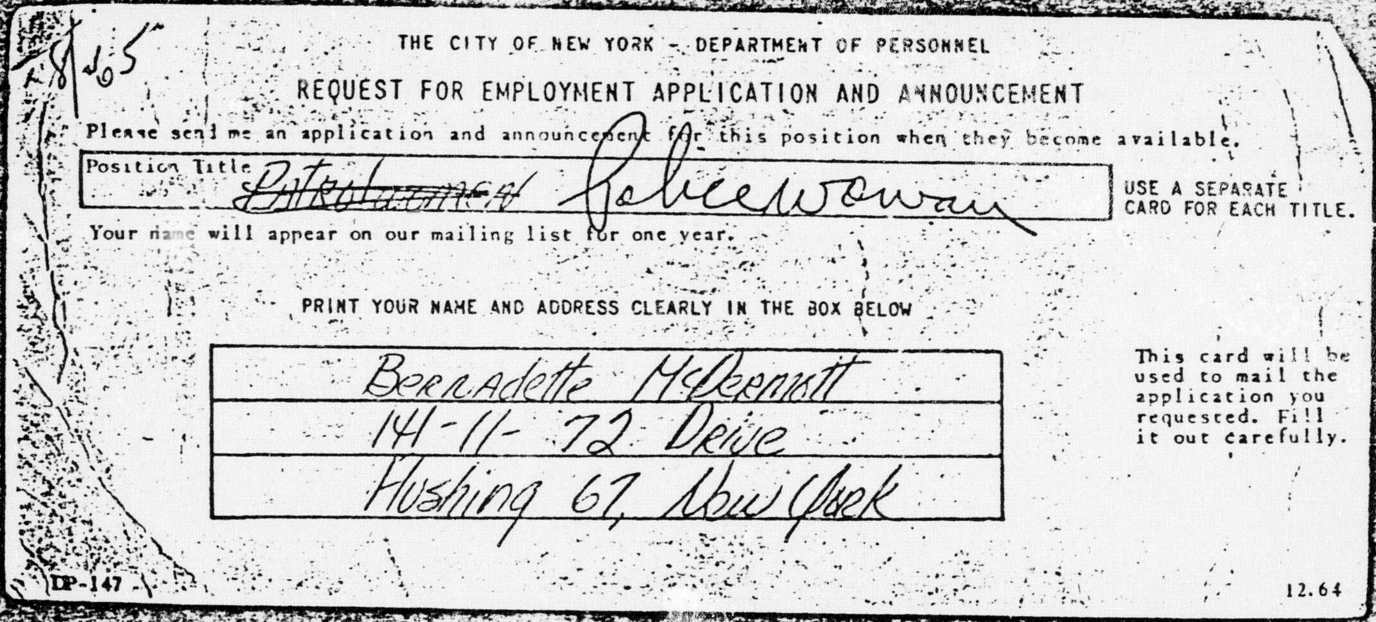
NEW YORK, N.Y.
PM
9 JUL
1965

A 239

APPLICATION SECTION

Supporting affidavit of Clara Palumbo

A 240



8/205

THE CITY OF NEW YORK - DEPARTMENT OF PERSONNEL

REQUEST FOR EMPLOYMENT APPLICATION AND ANNOUNCEMENT

Please send me an application and announcement for this position when they become available.

Position Title ~~Patrolwoman~~ Policewoman

USE A SEPARATE CARD FOR EACH TITLE.

Your name will appear on our mailing list for one year.

PRINT YOUR NAME AND ADDRESS CLEARLY IN THE BOX BELOW

Bernadette McDermott
141-11- 72 Drive
Flushing 67, New York

This card will be used to mail the application you requested. Fill it out carefully.

DP-147

12.64

UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF NEW YORK

---X

BERALDINE L. ACHA and ARLENE M. EGAN, :
each individually and on behalf of
all others similarly situated, :

Plaintiffs, :

-against- : **AFFIDAVIT**

ABRAHAM D. BEAME, individually and :
in his capacity as Mayor of the City
of New York, MICHAEL J. CODD, in- :
dividually and in his capacity as
Police Commissioner of the New :
York City Police Department and
THE CITY OF NEW YORK, as a public :
employer,
:
Defendants.

---X

Index No.
75 Civ. 3128
KTD

STATE OF NEW YORK)
) ss:-
COUNTY OF NEW YORK)

CLARA A. PALUMBO, being duly sworn, deposes and says:

1. I am a member of the class represented by plaintiffs in the above entitled action.

2. I was appointed as a Police Officer in the New York City Police Department (hereinafter "PD") on May 29, 1973.

3. My services with the PD were terminated on June 30, 1975 solely for budgetary reasons. I have not been reinstated.

4. My performance while serving as a Police Officer was at all times satisfactory.

5. I have been advised by counsel that the United States Court of Appeals for the Second Circuit has ruled that if a female Police Officer ("FPO") who was laid off on June 30, 1975 can show that, except for her sex, she would have been hired early enough to accumulate sufficient seniority to withstand the current layoffs, then her layoff violates §703(a)(1) of Title VII, 42 U.S.C. §2000 e-2(a)(1) since it was based on sexual discrimination. I submit this affidavit in support of my motion for summary judgment on the grounds that, but for the prior discriminatory acts of defendants herein, I would have been hired early enough to withstand the June 30, 1975 layoffs.

6. According to my counsel, the decision of the Court of Appeals permits a showing of discrimination to be based on proof of the earliest date that an FPO expressed the desire or intent to become a Police Officer. In my case it is indisputable that such an expression occurred not later than November, 1965.

7. In approximately June, 1965, I wrote a letter to the PD requesting information concerning employment with the PD.

8. In a letter dated November 24, 1965, I was informed by the PD that the last examination for the position of Policewoman had been held in 1964, and that no future examinations for Policewoman were anticipated until 1968. A copy of this letter is annexed hereto as Exhibit "CP-1".

9. On March 12, 1966, Examination No. 1455 ("Exam 1455") was given for the position of Police Trainee. The filing dates for Exam 1455 were from November 3, 1965 to November 30, 1965.

10. Upon information and belief, men were qualified to take Exam 1455 if they were at least 16 years of age on the examination date, and if they were between the ages of 17 and 21 on the date of appointment.

11. I was born on April 25, 1949, and was therefore 16 years of age on the date Exam 1455 was given.

12. As appears from records which have been made available to my attorneys, persons who took and passed Exam 1455 were appointed to the position of Police Trainee between approximately November 7, 1966 and June 23, 1967.

13. Between November 7, 1966 and June 23, 1967, I was 17 or 18 years old, and was therefore qualified to be appointed to the position of Police Trainee.

14. It is, therefore, clear and documented that I expressed the desire to become a Police Trainee in November 1965, and that, but for my sex, I would have taken and passed Exam 1455, and would have been appointed to the position of Police Trainee between approximately November 7, 1966 and June 23, 1967.

15. Had I been appointed to the PD as a Police Trainee between November 7, 1966 and June 23, 1967, I would not have been laid off on June 30, 1975, and even if I had been laid off on June 30, 1975 I would have been reinstated no later than July 10, 1975.

16. On October 25, 1969, I took and passed Examination No. 9081 ("Exam 9081") for the position of Policewoman.

17. Between March 12, 1966, the date of Exam 1455 and October 25, 1969, the date on which I took Exam 9081, there were approximately six examinations given for the position of Police Trainee. All six such examinations were open only to men who were between 16 and 21 years of age.

18. During the aforesaid period, I was

between the ages of 16 and 20. Except for my sex, I would have taken and passed one of the examinations given during this period, even had I not taken or not passed Exam 1455.

19. At all times since June 1966 I have been in good health, and have been ready, willing, able and available to serve as a Police Trainee and/or Police Officer in the PD.

20. My availability and desire to become a Police Officer is further documented by a letter, dated May 10, 1967, addressed to the College of Police Science of the City University of New York in which I expressed my desire to become a Policewoman. A copy of this letter is annexed hereto as Exhibit "CP-2".

21. My desire to become a Police Officer is further documented by my application in 1967 to John Jay College of Criminal Justice. I applied to John Jay College so that I could further my knowledge of law enforcement, in anticipation of subsequent employment with the PD. A copy of a letter, dated April 24, 1967, from John Jay College rejecting my application for admission is annexed hereto as Exhibit "CP-3".

22. In June 1966, I graduated from St. Michael's High School.

23. In 1968, I first obtained my motor

vehicle learner's permit. I renewed my permit every 6 months until approximately 1971 when, in preparation for my appointment to the PD, I took and passed the road test for the first time and obtained my motor vehicle operator's license. Had it been necessary for me to obtain such license at an earlier date, I would and could have done so.

24. I was required to wait a period of approximately four years from the time of my documented inquiry in 1965 before I was permitted to take an examination for appointment to the PD solely on the grounds of sex.

25. I was required to wait a period of approximately seven and one-half years from the time of my documented inquiry in November 1965 until my appointment on May 29, 1973, solely on the grounds of sex.

26. Had I been permitted to take any one of the approximately seven examinations for the position of Police Trainee given between March 12, 1966 and January 18, 1969, I would have accumulated sufficient seniority to withstand the June 30, 1975 layoff, or would have been reinstated no later than July 10, 1975.

WHEREFORE, I respectfully request that the motion for summary judgment on my behalf in the instant action be granted.

Clara A. Palumbo
CLARA A. PALUMBO

Sworn to before me this

7th day of May, 1976.

MURRAY A. GORDON
Notary Public, State of New York
No. 03-1512750
Cert. Filed in Bronx County
Term Expires March 30, 1977.

Exhibit 1 to affidavit of Clara Palumbo

U.F. 48

POLICE DEPARTMENT
CITY OF NEW YORK
NEW YORK 13. N. Y.

A 248

November 24, 1965

Clara Anne Palumbo
1010 Glenmore Avenue
Brooklyn, New York 11208

Dear Miss Palumbo:

Thank you for your inquiry concerning employment with the New York City Police Department. I am enclosing qualifications required for this position, however the last examination for Policewoman was held in 1964 and we do not anticipate another until 1968.

I wish you good luck in your quest for employment with our Department. Please feel free to contact us again in the future should any further question arise.

Sincerely yours,

William J. Wetteroth

William J. Wetteroth
Lieutenant, Coordinator
Personnel & Testing Unit
Police Academy

WJW/am
Enclosures
235 East 20th Street
New York, N.Y. 10003

Exhibit 2 to affidavit of Clara Palumbo

1010 Glenmore Avenue
Brooklyn, New York
May 10, 1967

College of Police Science
The City University of New York
235 E. 20th Street
New York, New York

Dear Sir:

Thank you very much for reviewing my application to attend your college. I am very much interested in becoming a Policewomen and have ambitions of someday attending your college at night.

Right now I am studing on my own all the facts that are needed to pass the Policewomen's test. I hope that I will succeed.

Yours very truly,

Clara Palumbo

Exhibit 3 to affidavit of Clara Palumbo

JOHN JAY COLLEGE OF CRIMINAL JUSTICE
The City University of New York
235 East 20 Street
New York, N. Y. 10003

A 250

[illegible] 1967
(date)

Miss Clara A Palumbo
1010 [illegible] St
Brooklyn N.Y. 11[illegible]

Dear Applicant:

We regret to inform you that your record does not meet the minimum standards for admission to the full-time day session program at our college.

Since we must follow the uniform admission requirements of the City University of New York, we cannot accept you into our current program.

If you are, or should become, an employee of an official law enforcement agency, you could, upon application, attend this college on a part-time basis.

Our best wishes go with you in the pursuit of your goal in higher education.

Sincerely,

William C. Clancy

William C. Clancy
Registrar

WCC:eg

Supporting affidavit of Carol Grace

UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF NEW YORK

---------------------------------------X

BERALDINE L. ACHA and ARLENE M. EGAN, each individually and on behalf of all others similarly situated,

Plaintiffs,

-against-

ABRAHAM D. BEAME, individually and in his capacity as Mayor of the City of New York, MICHAEL J. CODD, individually and in his capacity as Police Commissioner of the New York City Police Department and THE CITY OF NEW YORK, as a public employer,

Defendants.

---------------------------------------X

AFFIDAVIT

Index No.
75 Civ. 3128
KTD

STATE OF NEW YORK)
) SS:-
COUNTY OF NEW YORK)

CAROL A. GRACE, being duly sworn, deposes and says:

1. I am a member of the class represented by plaintiffs in the above-entitled action.

2. I was appointed as a Police Officer in the New York City Police Department (hereinafter "PD") on February 26, 1973.

3. My services with the PD were terminated on July 11, 1975 solely for budgetary reasons. I have not been reinstated.

4. My performance while serving as a Police Officer was at all times satisfactory.

5. I have been advised by counsel that the United States Court of Appeals for the Second Circuit has ruled that if a female Police Officer ("FPO") who was laid off on June 30, 1975 can show that, except for her sex, she would have been hired early enough to accumulate sufficient seniority to withstand the current layoffs, then her layoff violates §703(a)(1) of Title VII, 42 U.S.C. §2000e-2(a)(i), since it was based on sexual discrimination. I submit this affidavit in support of my motion for summary judgment on the grounds that, but for the prior discriminatory acts of defendants herein, I would have been hired early enough to withstand the 1975 layoffs.

6. According to my counsel, the decision of the Court of Appeals permits a showing of discrimination to be based on proof of the earliest date that an FPO expressed the desire or intent to become a Police Officer. In my case, it is indisputable that such an expression occurred not later than 1963.

7. In 1963, I applied to take Examination No. 9728 ("Exam 9728") for the position of Patrolman, which was scheduled for approximately September 14, 1963. I subsequently received an admission card to said examination, a copy of which is annexed hereto as Exhibit "CG-1."

8. On or about September 14, 1963, I appeared at Seward High School to take Exam 9798. I was not permitted to

take the examination solely on the grounds of my sex.

9. On information and belief, persons who took and passed Exam 9728 were appointed to the position of Patrolman in approximately 1964.

10. I was born on September 14, 1942. Therefore, in 1964 I was 21 years of age or older. Moreover, I was at all material times in possession of a valid motor vehicle operator's license.

11. I graduated from Newtown High School in June 1960.

12. At all times during 1964, I was in good health, and was ready, willing, able and available to serve as a Police Officer.

13. It is, therefore, clear and documented that I expressed a desire to join the PD in 1963, and that, but for my sex, I would have taken and passed Exam 9728, and would have been appointed to the PD in or about 1964.

14. Had I been appointed to the PD in 1964, I would not have been laid off on July 11, 1975.

15. In 1963 or 1964, I applied to take Examination No. 9968 ("Exam 9968") for the position of Policewoman.

16. On March 21, 1964, I took and passed Exam 9968 with a score of 93. A copy of the Notice of Eligibility card I received from the Department of Personnel notifying me that I had passed Exam 9968 is annexed hereto as Exhibit "CG-2."

17. I was scheduled to take the qualifying physical and medical examinations on or about May 3, 1965.

18. On May 3, 1965 I was pregnant with my first child, and was therefore unable to take the qualifying physical and medical examinations scheduled for that date.

19. I was informed by the Department of Personnel that my failure to take the May 3, 1965 physical and medical examinations would result in my either being placed at the bottom of the eligible list established from Exam 9968 or removed from the list entirely. I was further informed that I had no chance of being appointed if my name were placed at the bottom of said list.

20. Sometime on or about May, 1965, I wrote to the Department of Personnel requesting that my name be placed at the bottom of the Exam 9968 list.

21. I was never reached for appointment from said list.

22. On July 20, 1968, Examination No. 8046 ("Exam 8046") was given for the position of Patrolman.

23. Had Exam 8046 been open to women, I would have taken said examination.

24. As appears from records which have been made available to my attorneys, persons passing Exam 8046 were appointed to the PD between approximately June 30, 1969 and October 24, 1969.

25. At all times on or after June 30, 1969, I was in good health and I was ready, willing, able and available to serve as a Police Officer.

26. Had I been appointed to the position of Police Officer between June 30, 1969 and October 24, 1969, I would not have been laid off and even if I had been laid off, [illegible] would have been reinstated no later than July 10, 1975.

27. On October 29, 1969, I took and passed Examination No. 9080 ("Exam 9080") for the position of Policewoman with a score of 98.

28. I was required to wait a period in excess of nine years from the time of my documented inquiry in 1963 until my appointment on February 26, 1973.

WHEREFORE, I respectfully request that the motion for summary judgment on my behalf in the instant action be granted.

Carol A. Grace
CAROL A. GRACE

Sworn to before me this
26th day of May, 1976.

Peggy Beckwith
PEGGY BECKWITH
Notary Public, State of New York
No. 60-4624885
Qualified in Westchester County
Term Expires March 30, 1978

Exhibit 1 to affidavit of Carol Grace

DO NOT WRITE HERE
15958
APPLICATION NUMBER

THE CITY OF NEW YORK — DEPARTMENT OF PERSONNEL
299 BROADWAY NEW YORK 7 NEW YORK

ROOM NO. | SEAT No.

ADMISSION CARD

(FOR WRITTEN TEST WHEN A TEST IS REQUIRED)

SIGNATURE (TO BE SIGNED ONLY AT THE EXAMINATION IN PRESENCE OF MONITOR)

MONITOR'S INITIALS

PRINT YOUR NAME AND ADDRESS ON THIS ADMISSION CARD AT THE TIME YOU FILL OUT THIS APPLICATION →

PRINT YOUR NAME AND FULL MAILING ADDRESS IN SPACES BELOW

NAME MRS. CAROL A MARRONE
STREET 147-27 38th AVE FLUSHING
BOROUGH (IF RICHMOND OR QUEENS GIVE TOWN) QUEENS
P. O. ZONE 54
STATE NEW YORK

EXAM NO. 9728
SEPTEMBER 14,

PATROLMAN, P.D.
8:00 A.M.

~~SEWARD PARK~~ HIGH SCHOOL
350 GRAND STREET, MANHATTAN, N.Y. (USE LUDLOW STREET ENTRANCE)
IND SUBWAY 'D' TRAIN TO DELANCEY STREET STATION OR
BMT SUBWAY 'BROADWAY-JAMAICA' TRAIN TO ESSEX STREET STATION

ONE SESSION OF ABOUT 3½ HOURS

Exhibit 2 to affidavit of Carol Grace

A 257

CITY OF NEW YORK
DEPARTMENT OF PERSONNEL
299 BROADWAY, NEW YORK 7, N.Y.

NOTICE OF ELIGIBILITY

YOU HAVE PASSED THE EXAMINATION TAKEN BY YOU FOR THE POSITION INDICATED. YOUR RATINGS, AND RANK ON THE ELIGIBLE LIST, ARE AS SHOWN.

TITLE POLICEWOMAN

EXAM. NO. 9968

PART 1 TEST SCORE 93|0 WGT 10

PART TEST SCORE | WGT

PART TEST SCORE | WGT

ADJUSTED FINAL AVERAGE 93|00

VETERANS PREF. STATUS

LIST NUMBER 47

SUBJECT TO- B

APPLICATION NUMBER 306

CAROL A MARRONE
126 20 25 AVE CO KOTCH
COLLEGE POINT 56 N Y

SEE OTHER SIDE

TABCO 865568X-0

Supporting affidavit of Murray A. Gordon (preliminary injunction)

UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF NEW YORK

BERALDINE L. ACHA and ARLENE M. EGAN, each individually and on behalf of all others similarly situated,

Plaintiffs,

-against-

ABRAHAM D. BEAME, individually and in his capacity as Mayor of the City of New York, MICHAEL J. CODD, individually and in his capacity as Police Commissioner of the New York City Police Department and THE CITY OF NEW YORK, as a public employer,

Defendants.

AFFIDAVIT

Index No.
75 Civ. 3128
KTD

STATE OF NEW YORK)
) SS:-
COUNTY OF NEW YORK

MURRAY A. GORDON, being duly sworn, deposes and says:

1. I am a member of the firm of MURRAY A. GORDON, P. C., attorneys for plaintiffs herein, and I submit this affidavit in support of plaintiffs' motion for an order pursuant to Rule 65(a), Federal Rules of Civil Procedure, enjoining defendants from reinstating any former police officers,--other than plaintiffs and/or the class they represent whose employment with the New York City Police Department ("PD") was terminated on or after June 30, 1975 solely for budgetary reasons,--to the position of police officer in said department during the pendency of this action and before the entitlement of plaintiffs and the

members of the class they represent herein to reinstatement has been finally determined in this action.

2. This is a class action brought by and on behalf of former female police officers ("FPO's") in the PD under Title VII of the Civil Rights Act of 1964, 42 U.S.C. §2000e *et. seq.*, and 42 U.S.C. §1983 on the grounds that the plaintiffs and other members of the class they represent were discriminated against, on the basis of sex, by reason of the circumstance that they were laid off from their positions on or after June 30, 1975, pursuant to a seniority system prescribed by §80, New York Civil Service Law, which perpetuates past practices of discrimination against females in hiring of police officers by the PD.

3. After a hearing on plaintiff's motion for a preliminary injunction, this Court denied said motion, dismissed the complaint, and entered judgment in favor of defendants.

4. The United States Court of Appeals for the Second Circuit reversed the aforesaid determination and remanded the matter to this Court. The Court of Appeals held that if a female police officer can show that, but for her sex, she would have been hired early enough to accumulate sufficient seniority to withstand the current layoffs, her layoff violates Title VII.

5. The plaintiffs herein and the class they represent intend to proceed expeditiously in demonstrating that individual former FPO's are entitled to relief pursuant to the

decision of the Court of Appeals. However, it is possible that the PD will rehire police officers from the preferred list before some or all members of the class have been provided an opportunity to demonstrate their entitlement to relief.

6. One of the remedies suggested by the Court of Appeals was placing FPO's at the top of the preferred list.

7. In or about April, 1976, 205 police officers were rehired from the preferred list with the use of the United States Law Enforcement Assistance Administration ("LEAA") funds. We are advised by representatives of the defendants, that this group of 205 police officers included only one woman. On several other occasions it was widely reported in the New York press that federal funds would be available for the rehiring of still additional police officers, including Title X funds of approximately five million dollars channeled by the United States Department of Commerce to the PD through LEAA, and special funding to handle the forthcoming convention of the Democratic Party in New York City. The prospect of further rehirings is therefore sufficiently substantial and imminent to warrant consideration of the need for interim protective relief herein.

8. The members of the class herein do not hold high positions on the preferred list, and, therefore, few if any of them will be reinstated if there are rehirings from the preferred list in its current form prior to the determination of

their entitlement to relief. The members of the class will therefore be seriously prejudiced in connection with the relief they seek in this action if rehirings occur pendente lite. For if it is ultimately determined that the principal, if not the exclusive relief to which the plaintiffs are here entitled is placement in higher positions on the reinstatement list (and the opinion of Judge Feinberg in the Court of Appeals suggests this as a plausible type of relief), the current placement of others, who are the beneficiaries of the discrimination here complained of, will deprive the majority of the members of the class herein of the effective relief to which they would otherwise be entitled.

9. The defendants here have, in effect, already acknowledged that some appropriate protective relief is required to deal with the risks to the interests of the plaintiffs and the members of the class caused by the prospect of rehirings prior to the determination of the rightful seniority of the plaintiffs and the members of the class. Thus, at one point the defendants agreed in writing with the plaintiffs to provide counsel for the plaintiffs with five (5) days notice of certain prospective rehirings. A copy of that letter of March 3, 1976 is attached hereto as Exhibit "MAG-1." At another point, the defendants agreed in open court, before this Court on March 12, 1976, that any former police officer reinstated from the current preferred list would be so reinstated only with notice to each such police officer that he was subject to bumping by

FPO's in the event that any of the latter should be determined to have greater seniority than such reinstated police officer. This so-ordered stipulation was entered into in connection with the rehirings of the 205 police officers who were re-appointed from the preferred list in April 1976. (As counsel for the plaintiffs we ordered a transcript of the March 12, 1976 hearing setting out the foregoing stipulation and the order entered thereon by this Court, but we have been unable, after due diligence and inquiry, to obtain the transcript of that hearing; counsel for the defendants will, however, we believe, not dispute the foregoing stipulation and the order entered thereon).

10. The likelihood of success, which is one of the prerequisites for a preliminary injunction, is here, of course, clear particularly after the decision of the Court of Appeals which was based upon a stipulated set of facts which are not substantially in controversy.

11. Moreover, the relief sought herein does not seriously impair or impede any substantial interests of the defendants. No reinstatements or rehirings have been announced by the defendants for the immediate future. And in the event that the relief herein sought is granted, it will always be open and available to the defendnats to move for appropriate accommodation or modification of the order in the event that an exigent need should arise for rehirings of police officers

other than plaintiffs and the members of their class prior to the determination of the entitlement of the plaintiffs and such class members to their rightful seniority. We anticipate that such accommodation or modification will be stipulated to or otherwise available as long as fair, adequate, and reasonable provision is made for the protection of the interests of those plaintiffs and those members of their class who may ultimately be determined to greater seniority than any former police officer, other than such plaintiffs or members of their class, who may be reinstated.

WHEREFORE, it is respectfully requested that the defendants herein be enjoined, pendente lite, from reinstating any former police officers, other than plaintiffs or members of their class, before the entitlement of the plaintiffs and such class members to reinstatement to the PD has been determined.

MURRAY A. GORDON

Sworn to before me this
27th day of May, 1976.

Peggy Beckwith

PEGGY BECKWITH
Notary Public, State of New York
No. 60-[illegible]
Qualified in Westchester County
Term Expires March [illegible] 78

Exhibit 1 to affidavit of Murray A. Gordon (preliminary injunction)

The City of New York
LAW DEPARTMENT
MUNICIPAL BUILDING
NEW YORK, N. Y. 10007

W. BERNARD RICHLAND,
Corporation Counsel

A 264

March 3, 1976

Murray A. Gordon, P.C.
666 Third Avenue
New York, New York 10017

Re: Acha v. Beame

Dear Mr. Gordon:

This is pursuant to our telephone conversation of last night wherein it was agreed that before the City of New York implements the use of Title X funds your office will be given five (5) days notice of the Title X program that the City and federal government have agreed upon.

As I also stated in our conversation a meeting between City and federal officials is scheduled for today (March 3) on the subject of the use of the Title X funds.

Sincerely,

Gregory D. Frost

Gregory D. Frost
Assistant Corporation
Counsel

Defendants' Notice of Cross-Motion for Summary Judgment

UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF NEW YORK
--x

BERALDINE L. ACHA and ARLENE M. EGAN, :
each individually and on behalf of all
others similarly situated, :

Plaintiffs, :

-against- :

ABRAHAM D. BEAME, individually and in :
his capacity as Mayor of the City of
New York, MICHAEL J. CODD, individually:
and in his capacity as Police Commissioner of the New York City Police :
Department, and THE CITY OF NEW YORK, as
a public employer, :

Defendants. :

--x

NOTICE OF CROSS-MOTION FOR SUMMARY JUDGMENT

75 Civ 3128
(KTD)

Motion By:	Defendants
Date, Time and Place Returnable:	July 16 , 1976 at 10:00 AM in Room 2903, United States Courthouse, Foley Square, New York, N.Y. before Judge Kevin T. Duffy.
Relief Requested:	An Order pursuant to Rule 56 of the Federal Rules of Civil Procedure granting defendants summary judgment on the grounds there is no genuine issue as to any material fact and defendants are entitled to judgment as a matter of law.
Supporting Papers:	Affidavits of Michael J. Codd, sworn to the 9th day of July, 1976 and Michael S. Cecere, sworn to the 9th day of July, 1976, and all the prior papers and proceedings had herein.

Dated: July 9 , 1976
New York, N.Y.

Yours, etc.,

W. BERNARD RICHLAND
Corporation Counsel of the
City of New York
Attorney for Defendants
Municipal Building
New York, New York 10007
(212) 566-6377/2192

Supporting affidavit of Michael Cercere

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK
- x
:
BERALDINE L. ACHA, and ARLENE M. EGAN,
each individually and on behalf of all :
others similarly situated,
:
Plaintiffs,
:
-against- :
ABRAHAM D. BEAME, et al., :
Defendants.
- x

AFFIDAVIT
75 Civ. 3128
(KTD)

STATE OF NEW YORK)
:
COUNTY OF NEW YORK)

MICHAEL S. CECERE, being duly sworn, hereby deposes and says:

1. I am an Assistant Corporation Counsel in the office of W. BERNARD RICHLAND, Corporation Counsel of the City of New York, attorney for the defendants herein. I make this affidavit in support of defendants' cross-motion for summary judgment and in opposition to plaintiffs' pending motions.

2. It is the defendants' contention that plaintiffs' claims for relief are barred by the appropriate statutes of limitations for actions predicated upon 42 U.S.C. § 1983 and Title VII.

3. In the event the Court determines that the appropriate statutes of limitations do not bar plaintiffs claims herein, then it is submitted that the doctrine of laches should be applied to bar recovery.

4. In Point V of our accompanying Memorandum

of Law, we discuss in detail why the doctrine of laches is applicable to the instant case. Plaintiffs have alleged acts of discrimination dating as far back as 1964. Nonetheless, suit was not commenced until June, 1975. The element of delay, necessary for laches to be applicable, is clearly present here.

5. Additionally, if plaintiffs were accorded the relief they have requested, namely, reinstatement with back pay, the Police Department will almost certainly be disrupted, police morale will be adversely affected, and this, in all likelihood, will be translated into diminished police services for the City of New York. The element of prejudice occasioned by plaintiffs' delay, also necessary for laches to apply, is present.

6. Furthermore, if plaintiffs are reinstated with back pay, veteran police officers, who had nothing whatever to do with any discriminatory acts chargeable to the defendants, will necessarily have to be laid off.

WHEREFORE, it is respectfully requested that defendants' cross-motion for summary judgment be granted.

Dated: New York, New York
July 9, 1976

Michael S. Cecere
MICHAEL S. CECERE

Sworn to before me this
9 day of July, 1976.

SHARON L. FEIGENBAUM
Commissioner of Deeds
City of New York No. 2-2782
Certificate filed in New York County
Commission Expires March 1, 1977

Supporting affidavit of Michael J. Codd

UNITED STATES DISTRICT COURT FOR
THE SOUTHERN DISTRICT OF NEW YORK
---X

BERALDINE L. ACHA, and ARLENE M. EGAN,
each individually and on behalf of all
others similarly situated,

Plaintiffs,

-against-

AFFIDAVIT

ABRAHAM D. BEAME, individually and in
his capacity as Mayor of the City of
New York, MICHAEL J. CODD, individually
and in his capacity as Police
Commissioner of the New York City
Police Department and THE CITY OF
NEW YORK, as a public employer,

Defendants.

---X

STATE OF NEW YORK)
: .ss:
COUNTY OF NEW YORK)

MICHAEL J. CODD, being duly sworn, hereby deposes and says:

1. He is the Police Commissioner of the City of New York, and has held that position since January, 1974. Prior to his appointment as Police Commissioner, he served in the uniformed force of the Police Department for 32 years, during which time he held every rank from Patrolman through Chief Inspector. As Police Commissioner, he has cognizance and control of the government, administration, disposition and discipline of the department, and the police force of the department, through the authority delegated to him by Section 434 of the Charter of the City of New York.

2. He is thoroughly familiar with the facts and circumstances in this action, and makes this affidavit in

opposition to the plaintiffs' motion for summary judgment, and in support of defendants' motion for partial summary judgment.

3. In the latter part of 1974, the City of New York was faced with an unprecedented budget crisis which compelled the administration to develop fiscal plans which would result in drastically reduced expenses. All departments were ordered to reduce their operating budgets. Since the budget of the Police Department consists of over 90% personnel expenditures, the only effective means of decreasing costs was to reduce the number of employees.

4. On July 1, 1975, approximately 5, 034 members of the uniformed force were laid off pursuant to Section 80 and 81 of the New York State Civil Service Law, which provides that elimination of positions for budgetary reasons must be accomplished in reverse order of seniority. Of those originally separated, over 2,000, including 37 women, were recalled almost immediately, leaving 2,863 police officers on laid-off status. With minor exceptions, notably the rehiring of 205 officers under a federal grant on or about April 1, 1976, they have remained separated up to the present time.

5. Prior to 1973, it was the overwhelming consensus of the law enforcement agencies throughout the country that the position of police officer was peculiarly suited solely to males. Indeed, many departments employed no females, and of those that did, the functions of policewomen were limited to very specialized tasks. Usually, these assignments concerned the preservation of generally accepted standards of decency ~~in~~ &

in connection with the treatment of apprehended females and juveniles, and to undertake specialized investigative assignments requiring the use of females. These functions are generally provided for in Section 434a-2.0 of the New York City Administrative Code.

6. In the City of New York, the needs of the Police Department with respect to the number of female police officers had been established through many years of experience under the traditional concept of a male police force. The budgetary allotment for the title of policewoman in recent times, had been set at 355, while the usual complement of the female force generally approximated 290, all of whom were assigned to specialized tasks. The pay scale and job benefits of the position of Policewoman were identical to those of Patrolman (the male title).

7. Only recently has opinion begun to change in this area. The question whether women can perform the duties of a police officer as well as men is being brought into sharper focus. Unfortunately, there is little in the way of authoritative study to provide a conclusive determination on this question. One reason why authority is so lacking is that there has been virtually no group of females in police work of sufficient size to undertake a conclusive study. Recognizing this problem, the Police Department began to increase the complement of policewomen by accelerating hiring quotas initially, and by eliminating the distinction between patrolman and policewoman. Finally, with the cooperation of the Department of Personnel, the first "unisex" examination was offered on December 15, 1973 in which

men and women compete on an equal basis. Indeed the City was considered nationally as a leader in this effort. After an extensive recruitment effort over 50,000 candidates took the examination and over 40,000 of them passed. Of this total, more than 25% were women. The resulting eligible list was established without regard to the sex of the applicant and in the absence of any quota for females.

8. In the meantime, the Vera Institute was contracted to conduct a study of women on patrol. A control group of female police officers was created along with a comparison group of male officers. The staffing of the female group was made possible through the accelerated hiring quotas for females beginning in January, 1973. In fact, the major portions of the existing policewomen's list (Exam No. 9081) were appointed by mid-1973. The list was virtually totally exhausted by the end of that year. Total female appointments amounted to nearly 400 which was approximately 26% of the eligible list. Normally fully exhausted eligible lists produce appointments in the range of 23-24%. Unfortunately, the control group was decimated by the budgetary cuts in July, 1975 and the effect is expected to reduce considerably the ability of the Vera study to produce any reliable conclusions. However, the initial phase of the study has been concluded, and the compilation of the data is expected to be completed in July.

9. Your deponent is unaware of any court decision or authoritative study that has positively concluded that the duties of a police officer can be as effectively performed by both men and women. The Vera Institute study, while unlikely to be entirely dispositive of the question should produce some meaningful answers.

10. The city defendants in the present action are faced with a motion for summary judgment, which, if granted, would require the immediate rehiring of 54 female officers who were laid off pursuant to the seniority standards of the State Civil Service Law on July 1, 1975, together with an award of back pay which would necessarily be charged to the Police Department budget. Budgetary constraints are currently such that to require the reinstatement of 54 female officers would almost certainly result in the lay-off of a like number of male officers. Furthermore, the award of back pay for the period of one year would create a situation in which the Department might find itself forced to lay-off additional police officers to permit room in the budget to pay the back salaries for which the city received no benefit of services.

11. The police officers who would be laid off if the relief outlined in paragraph 10 were implemented are all experienced veterans having at least three years and, in some cases, as much as six years of service. The net effect of such a procedure may well be to separate twice as many veteran police officers whose cumulative seniority amounts to well over 300 years to make room for 54 relative novitiates who, because of their extended absence, will certainly require retraining. Moreover, the damage to already diminishing morale among those officers whose relative seniority places them in continuing jeopardy will undoubtedly take its toll on the elevated level of performance that the Department has been trying to exact to compensate for the drastic cut in personnel.

12. Lay-offs are determined, pursuant to the Civil

Service Law, by establishing a list in order of adjusted date of appointment. This latter date is arrived at by taking the actual date of appointment and adjusting it by subtracting time allowed for veteran's preference and creditable prior city service.

13. Seniority, however, is also used to determine other benefits, rights and privileges of employment. Among these are the following:

a. Top salary for the entry level position of Patrolman or Policewoman is reached in three years after annual incremental increases.

b. Additional incentive incremental increases accrue to all police officers on their 10th, 15th and 20th anniversaries.

c. New entrants received 20 days annual vacation, which is increased to 27 days after 3 years.

d. With some exceptions connected with specific duties vacation selections are made according to seniority among officers of the same rank in the same work units.

e. Entitlement to service retirement pension accrues after a minimum of 20 years of service, except that such entitlement vests after only 15 years of service.

f. Ordinary disability pension is awarded in the sum equal to one-third of a member's annual salary if such member has less than ten (10) years of service at the time of his/her disability; however, this amount is increased to one-half of his/her annual salary when such member has more than ten (10) years of service at the time of his/her disability.

g. A death benefit is awarded to the survivor of a member in the sum of one-half his/her annual salary in the case of a member with less than ten (10) years of service, and a full year's salary in the case of a member with more than ten (10) years service.

h. Assignments within the department are made with consideration given to experience and seniority.

14. Therefore, seniority begins to accrue on appointment and relative rights are established at that time. During a new officer's first weeks at the Police Academy, orientation lectures are given at which time the recruit is fully apprised of all the benefits, rights and privileges of employment as established both by law and by contract, and how these are affected by seniority. The new officers are also advised of the credit allowed for service in the armed forces or for prior city service. They are also advised that if they have any claims which may affect their relative seniority such claims should be promptly made.

15. As noted in the affidavit of Murray A. Gordon in support of the plaintiff's motion for summary judgment, 125 police trainees were appointed on May 8, 1970. These appointments exhausted the vacancies then in existence. Insufficient data is available to determine whether all of the 49 females listed in the Gordon affidavit would have scores greater than the last person appointed, had the two lists (9080 and 9081) been integrated. These were the last new appointments made to the Police Department until January 29, 1973 when the hiring freeze was lifted. These vacancies were filled in part to minimize a manpower crisis in the department by providing a source of eligibles, hired at a low salary, who would mature into police officers during the freeze period without necessity of selectively lifting the freeze on new appointments.

16. The terms and conditions of employment for the position of Police Trainee were significantly different from those of Patrolman or Policewoman so that it cannot be said that anyone who expressed a desire to become a police officer would necessarily also desire to be a police trainee. (see notice of examination for Exam No. 9080 attached as Exhibit "A".) For instance, the starting salary for Police Trainee in 1969 was $4,000.00 per annum with annual incremental increases of $240.00 as compared to a starting salary of $9,499.00 per annum for Patrolmen and Policewomen which increased to $10,950.00 per annum after three years. Similarly, the duties of a Police Trainee, as set forth in the Notice of Examination, are essentially to perform "under direct supervision, routine non-law enforcement tasks in Police Headquarters or field units...," while the duties of Patrolman are stated in the Notice of Examination as performing "general police duties in the various branches of the

department..." Moreover, the "Examples of Typical Tasks (Police Trainee)" clearly describe the position as entirely clerical in nature.

17. Currently, an application for a federal grant has been approved which will provide funding for the re-hiring of sixty (60) police officers. These officers will be re-hired in the order of their appearance on the preferred list which was established as a result of the lay-offs. For the reasons stated previously herein with respect to obtaining the most experienced officers and preserving the morale of those anticipating reactivation as well as those who have thus far survived lay-off but are jeopardized by future lay-offs, the orderly and relatively predictable qualities of a preferred list ought to be retained. In the event that the Court, in its discretion, concludes that relief be granted to some or all of the moving parties, your deponent urges that immediate reinstatement with resultant "bumping" of experienced officers not be ordered; and that relief be restricted in all cases to reordering of seniority for purposes of future recall.

18. With respect to the re-hiring of the 205 officers under a federal grant mentioned in paragraph 4 above, the defendants have entered into a stipulation that these officers are subject to "bumping" by women who may prove to have greater constructive seniority, and the officers so rehired were advised that they were accepting the position subject to those conditions. So as to avoid delay in the rehiring of sixty (60) additional officers under a new federal grant, this department is prepared to enter into a similar stipulated agreement, and to notify those re-hired that if they accept the position they do so, mindful of the

possibility that they will be displaced by others who may prove to have greater seniority.

WHEREFORE, it is respectfully requested that plaintiffs' motion for summary judgment be denied and defendants' motion for partial summary judgment be granted.

Michael J. Codd
MICHAEL J. CODD

Sworn to before me this
9 day of July, 1976.

Samuel C. Marino
SAMUEL C. MARINO
Notary Public, State of New York
No. 43-452[illegible]4
Qualified in Richmond County
Commission Expires March 30, 1978

Exhibit A to affidavit of Michael J. Codd

[illegible]

A single list will be established from this examination and appointments will be made to either Patrolman or Police Trainee (Police Department) depending on age.

Police Trainee is a trainee class of positions. A Police Trainee will receive a regular appointment as a Probationary Patrolman on reaching his 21th birthday, or as shortly thereafter as practicable, without taking any further written or physical tests, provided he has a satisfactory record as trainee and provided he passes a medical test identical to the one given to Patrolman candidates.

Salary, Vacancies and Benefits (Patrolman): The entrance salary is $9,42[illegible] per annum at present. Patrolmen receive increments of $721 at the end of their first year, $551 at the end of their second year and $679 at the end of their third year, in the Police Department. The salary reached through these increments is $10,950 per annum. Other benefits include an annual uniform allowance, 11 paid holidays annually, a generous annual leave, sick leave, membership in a liberal pension system, the Social Security System, a welfare fund, and a health insurance plan. There are many vacancies.

Police Trainee (Police Department): The entrance salary is $4,000 per annum. There will be an increment of $240 per annum after each year of trainee service up to a maximum of four increments. There will be a considerable number of positions in the Police Department under this program.

Many benefits are, or may be enjoyed by New York City employees. These benefits include generous annual leave, sick leave, membership in a liberal pension system, the Social Security System, a health insurance plan wholly paid for by The City of New York and the blood credit program.

Applications: *Filing Period* — Pre-application forms issued and received Monday through Friday from 9 a. m. to 5 p. m., except Thursday from 8:30 a. m. to 5:30 p. m., and Saturday from 9 a. m. to 12 noon from *September 4, 1969* through September 23, 1969.

Pre-application forms are obtainable free either by the applicant in person or by his representative at the Application Section of the Department of Personnel at 49 Thomas Street, New York, N. Y. 10013. They will also be mailed on request provided that the request to the above section and address is accompanied by a stamped (6 cents) self-addressed 9½-inch envelope for each application requested. All such mail requests must be postmarked not later than September 16, 1969. A pre-application form submitted by mail must be received no later than the last day for receipt of pre-application forms.

Pre-application forms are also issued in person (but not received) at all branches of the public Library systems in the various boroughs of New York City, Mount Vernon, New Rochelle, White Plains and Yonkers.

Regular applications will be issued and accepted for filing in person only at the time and place of the written test.

Date and Place of Test: The written test is expected to be held October 25, 1969. This date is tentative only and may be changed if circumstances so demand.

Promotion Opportunities: The Administrative Code provides that Sergeants shall be selected from among Patrolmen of the First Grade, Sergeants are eligible for promotion examination to Lieutenant; Lieutenants are eligible for promotion examination to Captain.

Time in service as a Police Trainee shall not be considered as service in the uniformed force for pension or retirement purposes, not in computing seniority in a promotion examination, nor in granting advancement in grade as a Patrolman.

Age Requirements (Patrolman): The Administrative Code provides that only persons shall be appointed Patrolman who shall be on the date of the written test less than 29 years of age; and the Public Officers Law provides that persons shall be at least 21 years of age at the time of appointment.

Exception: All persons who were engaged in military duty, as defined in Section 243 of the Military Law, subsequent to July 1, 1940, may deduct the length of time, not exceeding a total of six years, which they spent in such military duty from their actual age in determining their eligibility (Sub. 10a. Section 243, Military Law).

Police Trainee: Candidates must be at least 16 years of age on the date of the written test and at least 17 years of age at time of appointment.

At the time of investigation, applicants will be required to submit proof of date of birth by transcript of record of the Bureau of Vital Statistics or other satisfactory evidence. Any wilful misstatement may be cause for disqualification.

Minimum Requirements: At the time of appointment: (a) graduation from a four-year senior high school course, or (b) possession of an acceptable high school equivalency diploma or U.S. Armed Forces Institute G.E.D. certificate (a score of at least 35 on each of the five tests and a total score of at least 225 in the examination for the diploma or certificate); or (c) certification of having passed the above examination with these scores.

9080

17,700 filed

6,826 appeared

4,107 passed

2,713 failed

4 withdrew

10/25/69

[illegible] ment as Police Trainee [illegible] least required [illegible]

At the time of appointment as a Probationary Patrolman, residence in New York City, or in Nassau, Westchester, Suffolk, Orange, Rockland or Putnam Counties is required. Also at the time of appointment as a Probationary Patrolman, possession of a valid New York State motor vehicle operator's license is required.

Proof of good character will be an absolute prerequisite to appointment. The following are among the factors which would ordinarily be cause for disqualification: (a) conviction of an offense, the nature of which indicates lack of good moral character or disposition toward violence or disorder; (b) repeated conviction of an offense, where such convictions indicate a disrespect for the law; (c) repeated discharge from employment where such discharges indicate poor performance or inability to adjust to discipline; (d) addiction to narcotics or excessive use of alcoholic beverages; (e) discharge from the Armed Forces other than the standard honorable discharge. In accordance with the provisions of the Administrative Code, persons convicted of a felony are not eligible for positions in the uniformed forces of the Police Department. In addition, the rules of the City Civil Service Commission provide that no person convicted of petit larceny, or who has been dishonorably discharged by the Armed Forces shall be examined, certified or appointed as a patrolman.

The Police Commissioner has the right to appoint one out of three on each certification.

The rules of the City Civil Service Commission provide that no name shall be certified more than three times to the same appointing officer for the same or similar position, unless at such officer's request.

Those appointed as Probationary Patrolman must serve a probationary period of one year.

A Police Trainee will not be considered a member of the uniformed force or a peace officer.

Duties of Patrolman: To perform general police duties in the various branches of the department; to perform all additional functions for the rank prescribed by relevant laws, Rules and Procedures, orders or directives of the Police Department; and to perform special duties or assignments as directed by the Police Commissioner in his discretion.

Duties of Police Trainee: Following orientation and training at the Police Academy, performs, under direct supervision, routine non-law enforcement tasks in Police Headquarters or field units; performs related work.

Examples of Typical Tasks (Police Trainee): Assists precinct personnel in the preparation of records, documents, correspondence, reports, filing, typing, etc., assists precinct detectives in a clerical capacity; assists members of specialized units in their clerical tasks; operates switchboards.

Tests: Written, weight 100, 75% required.

The written test will be of the multiple choice type and will be designed to test the candidates' intelligence, initiative, judgment and capacity to learn the work of a police trainee and a patrolman. It may include questions on police situations, reading comprehension, arithmetic reasoning and civic awareness.

Candidates who pass the written test will be required to pass a qualifying physical test. This qualifying physical test may start on November 17, 1969. No second opportunity will be given to candidates who fail the qualifying physical test; or who fail to appear for the qualifying physical test, except those on active military duty.

The physical test will be designed to test the strength, agility, and power of candidates in addition, the physical test for patrolman will include a test for height. Candidates will take the physical tests at their own risk of injury, although every effort will be made to safeguard them. Medical evidence to allow participation in the physical test may be required and the Department of Personnel reserves the right to exclude from the physical test any candidate who upon examination of such evidence is apparently medically unfit. Candidates will be required to achieve a minimum mark of 70% or higher on the physical test in order to qualify. Medical and Physical requirements as posted on the Department of Personnel's Bulletin Board must be met.

Candidates shall be rejected for any deficiency abnormality or disease that tends to impair health or fitness. Such causes for rejection include but are not limited to defective vision, heart and lung diseases, hernia, paralysis and defective hearing. A history of any psychoneurotic disorder may disqualify. Persons must be free from such physical or personal abnormalities or deformities as to speech and appearance as would handicap them in the performance of their duties as a Patrolman.

Candidates who fail to attain the pass mark set for any test, subject or part of the examination shall be deemed to have failed the examination and no further test, subject, or part of the examination shall be rated.

Candidates are warned to make full and complete statements on their application blanks and medical questionnaires. Misrepresentation is ground for disqualification.

Reply Affidavit of Murray A. Gordon, dated July 14, 1976

UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF NEW YORK

BERALDINE L. ACHA, and ARLENE M. EGAN, each individually and on behalf of all others similarly situated,

Plaintiffs,

-against-

ABRAHAM D. BEAME, individually and in his capacity as Mayor of the City of New York, MICHAEL J. CODD, individually and in his capacity as Police Commissioner of the New York City Police Department and THE CITY OF NEW YORK, as a public employer,

Defendants.

REPLY
AFFIDAVIT

Class Action
75 Civ. 3128
KTD

76 JUL 14 P 4:41

STATE OF NEW YORK)
) SS:-
)
COUNTY OF NEW YORK)

MURRAY A. GORDON, being duly sworn, deposes and says:

1. I am a member of the firm of Murray A. Gordon P.C., attorneys for plaintiffs herein and I submit this affidavit in opposition to the cross motion of the defendants for summary judgment and in reply to the opposing affidavits submitted by the defendants with respect to the instant motions of the plaintiffs. Except where otherwise hereinafter indicated, I am personally and directly familiar with the facts set forth in this affidavit.

2. For the first time in this proceeding the defendants appear to be suggesting, although not directly asserting, that the pre-1973 hiring practices of the New York City Police Department ("PD") were other than discriminatory against women. In the affidavit of Police Commissioner Michael J. Codd, sworn to July 9,1976, ("Codd Affidavit") reference is made to a pre-1973 "overwhelming consensus of the law enforcement agencies throughout the country that the position of Police Officer was peculiarly suited to males" (¶"5") and that the pre-1973 discriminatory PD female Police Officer quotas "had been established through many years of experience under the traditional concept of a male police force" (¶"6"). Police Commissioner Codd then goes on to suggest that the "question whether women could perform the duties of a police officer as well as men is being brought into sharp focus" (¶"7") in that a study is being conducted by the Vera Institute on this "question" (¶¶"8" and "9").

3. Obviously none of the foregoing constitutes a refutation of the admitted and conceded facts in this case concerning pre-1973 quotas for women in the PD at less than 2% of the total uniformed force. Any "overwhelming consensus" or "traditional concept" of the kind referred to by Commissioner Codd is an acknowledgement rather than a refutation of sexual basis and discrimination. Consenses or traditions grounded in a consensus of bias or discrimination is far less than the kind of proof required by law to overcome the devastating significance

of past sexual quotas which bear no relationship to the qualifications of that sex to perform the duties of the job. The Police Commissioner's references to the Vera Institute's study are a distinct disservice to a fine and prestigious institution. The Commissioner admits that "there is little in the way of authoritative study to provide a conclusive determination" on the comparative capacities of men and women to perform the duties of a Police Officer (¶"7"); that the Vera Institute study is operating on the basis of data which "is expected to reduce considerably the ability of the Vera study to produce any reliable conclusions " (¶"8") that that study has not been completed (¶"8")and is "unlikely to be entirely dispositive of the question" (¶"9"). In such circumstances any reference to the Vera Institute study, and the suggestion that it might support in any manner or degree discrimination against women for employment in the PD,is misleading.

4. I have contacted the Vera Institute by telephone since receipt by our firm of the affidavit of Police Commissioner Codd. Attached hereto as Exhibit "A" is a copy of a communication that is dated July 12, 1976, from Dr. Joyce Sichel, Director of the Women on Patrol Project, indicating that the report referred to by the Police Commissioner will not be available for another two or three months. I have also been apprised by the Vera Institute that there have been no conclusions

drawn or reached by the Vera Institute at this point concerning the comparative job performance of men and women as Police Officers. It was therefore misleading for the Police Commissioner to have made any reference to the pending Vera Institute study.

5. In the defendants' Memorandum of Law in opposition to the plaintiff's motion for certification of a class, the defendants contend that "there is no evidentiary basis to determine the size of the class" (DML, p.9). Attached hereto as Exhibit "B" is a list of each of the 400 women laid off on or about June 30, 1975 and not rehired before July 10, 1975. This list contains the name, date of appointment and date of birth of each of the foregoing members of the class. This list was supplied to the plaintiffs' counsel by counsel for the defendants in April 1976. In view of the exactitude of this list and its source, it is clearly unwarranted for defendants to suggest lack of "evidentiary basis for determining the size of the class."

6. There are other factual circumstances known to the defendants and their counsel which confirm that the defendants present objections to the certification of the class are frivolous and intended to be dilatory. The opinion of the Court of Appeals for the Second Circuit herein mandated expedition and efforts to expedite the process of this litigation. Accordingly, at my instance, a conference was scheduled with Gregory Frost, then Assistant Corporation Counsel for the City of

New York in charge of defense of this litigation, for the purpose of defining and narrowing the issues in this action and seeking to stipulate matters wherever possible. Such a conference was held at my office on March 10, 1976, and an agenda of the matters to be discussed was prepared. A copy of such agenda is attached as Exhibit "C". At that conference the matter of the definition of the proper class herein was discussed and it was agreed with Mr. Frost that the class to be certified was the class of women contained in the list which is attached hereto as Exhibit "B".

7. Following the aforesaid conference with Mr. Frost, a conference was scheduled and held with this Court on April 13, 1976, once again for the purpose of defining and narrowing the issues. At that conference with the Court, which was attended by Mr. Frost and myself, the matter of the certification of the class was raised, and it was once again stipulated and agreed by the attorneys for the respective parties hereto that the class would be the women listed in Exhibit "B". Issues concerning the class herein are, therefore, newly raised and in direct conflict with the position taken by the counsel for the defendants on the matter previously.

8. In the Codd affidavit, and thereafter at frequent points in defendants' memorandum of law, it is contended that reinstatement of the 54 female former Police Officers implicated in the motion for summary judgment would "almost

certainly result in the lay off of a like number of male officers" (¶"10"). This statement is demonstrably false and misleading as the same affidavit of Police Commissioner Codd (¶"17") states that 60 currently laid off Police Officers will be rehired. That rehiring, as appears from the attached Exhibit "D", will take place on July 19, 1976 unless otherwise enjoined by this Court. If the 54 women on whose behalf summary judgment is sought were among the 60 Police Officers to be rehired on July 19, 1976, each of the women could be reinstated without the bumping of any incumbent Police Officer.

5. In the foregoing connection it is relevant to point out that the defendants herein, by stipulation, anticipated and acknowledged the bumping rights of plaintiffs and the members of the class herein with respect to at least 204 incumbent Police Officers. On April 1, 1976, 205 laid off Police Officers were rehired by the PD. Prior to such rehiring, I instituted an application to enjoin the rehiring, and that motion came on to be heard before this Court on March 12, 1976. Prior to argument before this Court, agreement was reached between my office and that of the Corporation Counsel that the 205 Police Officers would be rehired on the following conditions: (i) each would be subject to bumping by any plaintiff ultimately entitled to reinstatement by reason of superior seniority; (ii)

each of the 205 to be reappointed would be notified of the foregoing condition; (iii) the plaintiff would be served with prior written notice with respect to any future rehiring of Police Officers; and (iv) all of the foregoing was without prejudice to the position of defendants on any of the issues in this action.

10. I was subsequently advised by Mr. Frost and by Mr. Jules Tesler, Regional Director of LEAA, that each of the 205 reinstated Police Officers was notified of the foregoing condition of appointment. It is therefore misleading to suggest that what is involved by way of the reinstatement of 54 laid off former female Police Officers is an unmitigated bumping of otherwise innocent and unsuspecting Police Officers. All of the parties involved knew, and accepted as a condition of their appointment, that each of the 205 Police Officers hired on April 1,1976 was subject to bumping at the instance of a laid off former female Police Officer who was entitled to greater seniority.

11. Police Commissioner Codd in his affidavit also complains of the prospect of reinstatement of the 54 former female Police Officers on the grounds that the "net effect of such a procedure may well be to separate twice as many veteran Police Officers whose cumulative seniority amounts to well over 300 years to make room for 54 relative novitiates" (¶"11"). This assertion is inaccurate. As appears from a copy

of the preferred list, --which has been made available to plaintiffs' counsel by defendants and which will be made available to this Court upon the return date of the motions herein. -- of the 60 Police Officers scheduled to be rehired on July 19, 1976 (of which 59 are men), 57 were appointed between November 19, 1973 and December 17, 1973. Of the 205 Police Officers rehired on April 1, 1976 (of which 204 were men), at least 201 were appointed between October 1, 1973 and November 19, 1973. Defendants allege that each of the 54 plaintiffs on whose behalf summary judgment is sought were appointed in 1973 [see defendant's Rule 9(g) statement, ¶"9"]. This data can be further refined from the preferred reinstatement list, -- which has been supplied to counsel for the plaintiffs by counsel for the defendants and which is not annexed because of its massive bulk but will be made available to the Court upon the return date of the motion, -- and from Exhibit "B" annexed hereto. It appears from these lists that the 54 women involved in the instant motion for reinstatement were appointed as follows: 2 were appointed in 1974; 4 were appointed November 19, 1973; 2 were appointed between October 1, 1973; and November 19, 1973; 2 were appointed on October 1, 1973, and the balance were appointed prior to October 1, 1973. It is therefore conclusively demonstrated by the documented data herein, -- all of which comes from the files and records of the PD, -- that there is no significant disparity or differential between the PD experience of the 54 former female Police Officers for whom we seek reinstatement and the incumbent male Police Officers in competition with them for positions in the PD. In most instances the former female Police Officers have greater experience than the males with whom they are said to be in competition. In no circumstances is there any basis for designating the male Police Officers as "experienced veterans" and the women as "relative novitiates". The explanation for the lower positions these 54 former female Police Officers have on the preferred list for reinstatement is that nearly all of the Police Officers rehired on April 1, 1976, and nearly all of those scheduled to be rehired on July 19, 1976, have received 30 months seniority credit as veterans' preference pursuant to New York Civil Service Law §85.

12. Similarly misleading is the assertion of the defendants that the members of the class have mutually antagonistic claims since reinstatement of one may involve the bumping of another. There are currently approximately 1162 Police Officers serving in the New York City Police Department who have effective dates of seniority later than May 8, 1970. This data appears from the aforesaid computer print out which will be made available to this Court on the return date. In this litigation we are undertaking to demonstrate that each of the members of the class would have been appointed on or

before May 8, 1970 but for the PD discrimination in hiring of female Police Officers. Consequently, even if each of the members of the class is entitled to reinstatement there is no danger that any of the plaintiffs or other members of the class will be bumping each other or vying for the same position.

13. The affidavitof the Police Commissioner, (¶"15"), and the defendants at several points in the DML, suggest that the data fails to establish which, if any of the 49 laid off former female Police Officers who, except for sex, were eligible to take the 1969 Police Trainee examination, would have been among the 125 appointments to the position of Police Trainee made on May 8, 1970. The data supplied by the defendants here, once again, makes it clear that no less than 38 of such 49 members of the class would have been appointed as a Police Trainee on that date. Members of my staff have examined, with the permission of the counsel for the defendants, the certification cards of each of the males appointed as Police Trainee on May 8, 1970, and has determined by that examination that 87 of the Police Trainees appointed on that date achieved a score of 87 or higher. As has already been set out in my earlier affidavit herein (¶"11"), 38 of the 49 former female Police Officers who were eligible as Police Trainees except for their sex, scored 87 or better on the exmination which was identical with the one for Police Trainee which they took. The total

of the two foregoing groups would be 125. It is, therefore, clear from the documented evidence herein supplied by the defendants that at least 38 of the 49 women involved in the instant motion for summary judgment would have been appointed May 8, 1970 as a Police Trainee except for her sex.

14. Defendants have suggested that plaintiff Patricia W. Boyce, who took and failed examination number 9968 for the position of Policewoman with a score of 74 on March 21, 1964, was not prejudiced by her inability to take another examination for appointment to the Police Department until 1969. As appears from the certification cards which members of the staff have examined with the permission of the Department of Personnel, the passing score on a comparable examination, No. 9996, for the position of Patrolman, given November 14, 1964, was 70. This circumstance renders irrelevant for purposes of the pending motion that she failed the examination she did take.

15. One final comment is in order with respect to the papers heretofore submitted by the defendants on the pending motions. Throughout those papers the defendants appear to be suggesting that the PD and the City will be served more effectively if the former female Police Officers are not reinstated and, instead, their places as Police Officers are filled by male Police Officers who are either incumbents or who are to be rehired. The stated rationale for this posture is experience

(contrary to the facts), morale of the male Police Officers, budgetary constraints, service, etc., etc. In view of the data developed in this affidavit, it is not unlikely that these rationalizations only veil perpetuation of the sex discrimination which this litigation is all about. Thus the defendants nowhere refer to, and appear to denigrate the special kinds of service which women Police Officers can provide to the PD and to the people of the City of New York. The handling of rape cases, family disputes, juvenile deliquency matters, as well as the "traditional" matron duties of female Police Officers, are undoubtedly enhanced rather than impaired when performed by women. The increasing involvement of women in economic and related activities in the City, resulting in an increasing incidence of conflict with law enforcement agencies, also implicates the need for greater participation by women in law enforcement in this City. None of these matters is mentioned by the Police Commissioner who, instead, here refers to past "consensus" and "tradition" of sex discrimination with no criticism of that history; to studies seeking to probe differing law enforcement capacities of men and women; to non-existent experience differentials in order to justify non-remediation of discrimination; to the morale of male but not female members of the PD uniformed force. The suspicion will not down that the Police Commissioner is more devoted to perpetuating than remediating victimization caused by PD sex discrimination. In such circumstances there can be no justification for denying to the plaintiffs and the members of their class the full measure of relief available to this Court not only to compensate them but to bring home to the defendants at last the message of Title VII, §1983, and the Fourteenth Amendment that the PD has the duty vigorously to eliminate present and remediate past sex discrimination.

MURRAY A. GORDON

Sworn to before me
this 14th day of July,
1976

Carolyn B. Young

CAROLYN B. YOUNG
Notary Public, [illegible]
No. 31-[illegible]
Qualified in New [illegible]
Commission Expires [illegible] 30, 1977

Exhibit A to Reply affidavit of Murray A. Gordon

VERA INSTITUTE OF JUSTICE
30 EAST 39TH STREET
NEW YORK, N.Y. 10016
(212) 986-6910

A 292

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July 12, 1976

Murray A. Gordon, P.C.
666 Third Avenue
25th Floor
New York, New York 10017

Dear Mr. Gordon:

You made an inquiry concerning a study we are performing on the performance of female police officers in New York City.

I do not anticipate that this report will be available for approximately two or three months.

Sincerely,

Joyce Sichel

Dr. Joyce Sichel
Director
Women on Patrol Project

JS:cab

RECEIVED
JUL 14 1976
MURRAY A. GORDON, P.C.

Exhibit B to reply affidavit of Murray A. Gordon

MAGPC CITY ①

SOF

A 293

Reference Entry	RECORD# 000000	Tax #	Name	Court	DATE OF				DATE OF EXAM		BLOCK = 080 LIST #
		1....5....10....15....20....25....30....35....40....45					...65...70...75...80				
2751	RECORD# 000001	870033	CHARLES ARNELL	PB ELIS	092774	09532[illegible]	PCFC0055	00013.00	3/22/42	G 681	1547
2750	RECORD# 000002	[illegible]	MC KEVITCH LINDA M	PB ELIS	092774	[illegible]	[illegible]	00014.00	10/13/47	do	1541
2749	RECORD# 000003	[illegible]	LEACY BARBARA A	PB ELIS	092774	134385962	PCFC0057	00015.00	9/21/47	"	1290
2748	RECORD# 000004	[illegible]	KRZPINSKI FRANCINE	PB ELIS	092774	131342815	PCFC0058	00016.00	1/8/46	"	357
2747	RECORD# 000005	[illegible]	OSHAUGHNESSY M	PB ELIS	092774	102346877	PCFC0059	00017.00	1/18/50	"	231
2746	RECORD# 000006	[illegible]	[illegible]CK MARY ANN M ✓	PB ELIS	092774	950359667	[illegible]	00018.00	3/20/47	"	41
2790	RECORD# 000007	[illegible]	Woody [illegible]	PB TL	070174	[illegible]	[illegible]	00080.00	10/5/46	"	1661
2789	RECORD# 000008	870705	QUINTANA JEANNE R	013 PCT	070374	[illegible]	PCFC0345	00081.10	7/25/47	"	1123
2788	RECORD# 000009	[illegible]	JORDAN MARY E	114 PCT	070174	071361872	PCFC02[illegible]	00082.20	11/16/44	"	1032
2773	RECORD# 000010	867051	FERRER DEBRA	PB ELIS	093173	153424637	PCFC0347	00083.00	11/1/50	"	74
2771	RECORD# 000011	[illegible]	PRICE MARGARET A	KEL CSK	073073	[illegible]	PCFC0344	00084.00	1/24/46	"	143
2770	RECORD# 000012	867430	CAMPBELL GERTRUDE		073073	057405621	PCFC0343	00085.10	11/11/49	"	521
2199	RECORD# 000013	[illegible]	GOODMAN MATTIE D	017 PCT	032574	[illegible]	PCFC0684	00667.00	10/29/47	"	1701
2198	RECORD# 000014	[illegible]	KELLY KATHLEEN A	069 PCT	032574	127403918	PCFC0685	00668.00	7/17/49	"	1365
2197	RECORD# 000015	869950	JOSEPH OMAR K ✓	INT A	032574	073460578	PCFC0686	00669.00	1/17/47	"	1303
2196	RECORD# 000016	869951	MCCAIN ALICE J ✓	020 PCT	032574	114382[illegible]	PCFC0687	00670.00	6/1/47	"	1103
2195	RECORD# 000017	869954	RASMUSSEN KAREN J ✓	005 PCT	032574	061402752	[illegible]	00671.00	10/28/49	"	476
2194	RECORD# 000018	869955	SULLIVAN MONICA ✓	107 PCT	032574	099367134	[illegible]	00672.00	6/7/50	"	438
2193	RECORD# 000019	[illegible]	PLECHINSKY MARYANNE	065 PCT	032574	[illegible]	PCF	00673	7/8/46	"	194
2151	RECORD# 000020	869942	REID MADOLIN F	020 PCT	060474	078327262	PCFC0737	00715.00	12/23/40	"	1663
2150	RECORD# 000021	869934	BAILEY THOMALINA	063 PCT	060474	062361448	[illegible]	00716.00	2/13/43	"	1480
1963	RECORD# 000022	869514	CODRINGTON JOAN A	108 PCT	121773	051385[illegible]	PCFC0936	00903.00	7/2/47	"	1724
1962	RECORD# 000023	869536	WALKER EVERLINA ✓	079 PCT	121773	414785117	PCFC0937	00904.00	3/4/47	"	1705
1961	RECORD# 000024	869526	MAIMLESS WIVE ✓	005 PCT	121773	076[illegible]513	PCFC0938	00905.00	10/13/41	"	1694
1960	RECORD# 000025	869537	WILSON WILMA L	011 PCT	121773	[illegible]6374	PCFC0939	00906.00	10/24/48	"	1665
1959	RECORD# 000026	869531	SHARPTON ESSETTE ✓	066 PCT	121773	115324660	PCFC0940	00907.00	4/23/42	"	1573
1958	RECORD# 000027	[illegible]	JOHNSON PATRICIA J	066 PCT	121773	127401777	PCFC0941	00908.00	10/3/50	"	1572
1957	RECORD# 000028	869524	LINDSAY CELA H	073 PCT	121773	130343954	PCFC0942	00909.00	7/29/44	"	1456
1956	RECORD# 000029	869529	PELLINO E A ✓	070 PCT	121773	31[illegible]076	PCFC0943	00910.00	11/4/48	"	1349
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925 RECORD# 000333  670027  ESSERMAN CAROL G  ✓  066 PCT  062674  11732-374  PCF02078   02094.00   4/22/44
924 RECORD# 000334  660676  COLLINS MARILYN A ✓  MAN-SEX  032673  123464749  PCF02079   02095.00   1/17/48
923 RECORD# 000335  660679  EASCE JOYCE       ✓  106 PCT  043073  090327159  PCF02080   02096.00   1/9/41
156 RECORD# 000336  660685  BUCKLEY MARY E    ✓  044 PCT                     PCF02086   02097.10   5/24/46
921 RECORD# 000337  660675  CAUWELL DEBBIE S  ✓  106 PCT  043073  122362757  PCF02081   02098.00   7/15/42
920 RECORD# 000338  660681  GLANTUM MARIA F   ✓  M PCT S  042073  121348649  PCF02082   02099.00   3/10/45
922 RECORD# 000339  660675  BELLANDCCA MARY L ✓  043 PCT  043073  092347125  PCF02083   02100.00   12/31/40
196 RECORD# 000340  660414  MEYER MYRTLE S M  ✓  023 PCT  100173  244741532  PCF02088   02104.00   10/11/48
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781 RECORD 000341  066466  CUNNINGHAM E H  ✓     042 PCT   100173  102400723  PCF02092  02109.00   4/27/49   33,
779 RECORD 000342  066636  FLAHERTY KATHLEEN A ✓ 042 PCT   041973  171400181  PCF02094  02110.00   11/21/48  23,
775 RECORD 000343  066656  HIGGINS MARJORIE J ✓  NAR-DIV   032673  072261427  PCF02129  02113.00   11/29/41  27
774 RECORD 000344  066566  TASK PHYLLIS J ✓      073 PCT   032673  072249365  PCF02130  02114.00   10/21/44  27,
773 RECORD 000345  066265  SCHWELINER PERRY A ✓  109 PCT   032673  056420654  PCF02131  02115.00   10/25/49  26
772 RECORD 000346  066696  THOMAS MARY A ✓       CHS-SEX   032673  051404345  PCF02132  02116.00   12/30/46  25
771 RECORD 000347  066564  FEDINGER P A ✓        NAR-DIV   032673  097402419  PCF02133  02117.00   2/17/15   23
770 RECORD 000348  066082  SAMMON KATHLEEN ✓     078 PCT   032673  131422085  PCF02134  02118.00   5/20/50   2
769 RECORD 000349  066627  KAISTO KAREN S ✓      026 PCT   032673  072303684  PCF02135  02119.00   4/21/47   2
768 RECORD 000350  066677  LICURSO PATRICIA A ✓  020 PCT   032673  131347415  PCF02136  02120.00   4/25/45   1
767 RECORD 000351  066604  MCNALLY LAURA M ✓     076 PCT   032673  104405413  PCF02137  02121.00   11/13/49  2
766 RECORD 000352  066677  MICHAELS WENDY M ✓    024 PCT   032673  119327416  PCF02138  02122.00   5/30/42   2
765 RECORD 000353  066666  PENNINGTON DEBORAH ✓  MED SEC   032673  113964014  PCF02139  02123.00   1/3/48    4
764 RECORD 000354  066673  REILLY C E ✓          NAR-DIV   032673  171301334  PCF02141  02124.00   11/9/47   4
763 RECORD 000355  066676  LONERGAN JANE A ✓     IMU       032673  061301925  PCF02140  02125.00   10/23/45  1
762 RECORD 000356  066683  MCKINNEY GLORIA J ✓   NAR-DIV   032673  051302409  PCF02142  02126.00   1/10/46   1
761 RECORD 000357  066607  SAUTHER STEPHANIE L ✓ NAR-DIV   061573  092309139  PCF02143  02127.00   9/22/47   1
760 RECORD 000358  066552  DOLAN THERESA M ✓     046 PCT   032673  076409200  PCF02144  02128.00   7/5/46    17
759 RECORD 000359  066263  JAFFE KATHLEEN L ✓    INT A D   032673  055460798  PCF02145  02129.00   4/9/48    16
758 RECORD 000360  066556  GENTILELLA M A ✓      109 PCT   032673  071364762  PCF02146  02130.00   11/12/45  16
757 RECORD 000361  066150  LILLMAN MARY ELLEN ✓  042 PCT   022673  061359805  PCF02147  02131.00   4/29/45   13
758 RECORD 000362  066566  MCNAMARA C A ✓        NAR-DIV   032673  111400169  PCF02148  02132.00   11/13/48  7
720 RECORD 000363  066619  CUNNINGHAM EDITH L ✓  OPT-INV   022673  102340305  PCF02211  02166.00   9/24/43   13
719 RECORD 000364  066634  KAMINSKY CAROL L ✓    042 PCT   022673  062304070  PCF02212  02167.00   10/12/47  11
718 RECORD 000365  066430  OLSON J L ✓           FC-DIV    022673  060403274  PCF02213  02168.00   5/27/46   [illegible]
717 RECORD 000366  066427  BARRY MICHAELE A ✓    NAR-DIV   022673  111400174  PCF02214  02169.00   10/23/47  124
716 RECORD 000367  066439  BURKE MARGARET M ✓    NAR-DIV   022673  118007666  PCF02215  02170.00   6/3/49    12
715 RECORD 000368  066430  MAYER CHRISTINE F ✓   IMU       022673  062362066  PCF02216  02171.00   2/27/44   11
714 RECORD 000369  066425  KIELDUMMS HELEN A ✓   ESS 1     022673  097365594  PCF02217  02172.00   7/24/44   11
713 RECORD 000370  066424  AVENA KATHLEEN A ✓    M PCT S   022673  079367248  PCF02218  02173.00   3/17/46   3
712 RECORD 000371  066446  MUSCATELLI T A ✓      M PCT S   022673  072346706  PCF02219  02174.00   9/8/42    1
711 RECORD 000372  066431  PULLIESE MAURIEN ✓    MED SEC   022673  132390302  PCF       02175      6/5/47    1
707 RECORD 000373  066432  GLACE CAROL ✓         028 PCT   022673  078363440  PCF       02176      9/14/42   21
710 RECORD 000374  066428  CATALANO SHARON J ✓   M PCT S   022673  101362019  PCF02220  02177.00   4/4/47    5
709 RECORD 000375  066433  JOHNSON MARGARET A ✓  031 PCT   022673  097360792  PCF02221  02178.00   3/14/46   5
708 RECORD 000376  066437  DAVEY CHALES ✓        042 PCT   032673             PCF02148  02179.10   6/5/41    5
645 RECORD 000377  066198  LOMP CATHERINE M ✓    NAR DIV   012473  109400667  PCF02256  02274.00   12/13/49  8
644 RECORD 000378  066202  WILLIAMS CLARICE ✓    019 PCT   012473  054403630  PCF02257  02275.00   11/17/49  6
643 RECORD 000379  066199  MIZA KATHLEEN T ✓     ES AREA   012473  052207524  PCF022[illegible] 02276.00   10/29/44  [illegible]
642 RECORD 000380  066201  PARKER ALICIA C ✓     MAN-SEX   012473  131420094  PCF02[illegible] 02277.00.  10/1/50   4.
641 RECORD 000381  066426  BUTLER ANNMARIE D ✓   IMU       022473  072341480  PCF02[illegible] 02278.00   5/4/43    38
640 RECORD 000382  066200  MURRAY CAROLYN E ✓    044 PCT   012473  073367539  PCF02261  02279.00   1/30/47   26
587 RECORD 000383  066412  BOYCE PATRICIA M ✓    075 PCT   052473  069367596  PCF02283  02299.60   1/11/43   321
586 RECORD 000384  067490  DEFMAN DOLORES A ✓    000 PCT   073073  301442197  PCF02287  02300.00   7/26/45   26j
584 RECORD 000385  067806  LIVERS SHIRLEY C ✓    ACE SQD   052173  080401924  PCF02287  02303.00   12/26/47  64
                   1...5...10...15...20...25...30...35...40...45...50...55...60...65...70...75...80...85,..90...95..100
   1RECORD = 00000                                  DATE OF PRINTOUT 06/24/75                     BLOCK = 0800
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582 RECORD 000386  067497  CUNNINGHAM J M ✓      000 PCT   073073  241647553  PCF02286  02306.00             665
579 RECORD 000387  066466  SIMMAN DOROTHY A ✓    069 PCT   052473  121361707  PCF02290  02307.00   8/10/45   84 2
559 RECORD 000388  066516  DICKINSON F M ✓       075 PCT   121773  091604906  PCF02312  02328.00   11/26/47  1010
554 RECORD 000389  065406  STILL FANNIE M ✓      032 PCT   052973  090[illegible]  PCF02313  02329.00   12/10/48  83
606 RECORD 000390  066093  NELSON LOUISE M ✓     MTD UNT   022673  091[illegible]  PCF02319  02335.00   8/3/43    6
553 RECORD 000391  066783  FOVELL ILENE F ✓      108 PCT   102973  06[illegible]  PCF02320  02336.00   10/23/42  73
472 RECORD 000392  066099  SKINNER FRIEDA ✓      090 PCT   111973  067307[illegible]  PCF02408  02424.00   12/23/46  13
473 RECORD 000393  066692  PERTIK NETTYE F ✓     029 PCT   052473  240621[illegible]  PCF02409  02425.00   8/21/48   46
467 RECORD 000394  067[illegible]  LYLLE LINDA A ✓  114 PCT [illegible]  227[illegible]  PCF02428  02442.00   3/8/48    63
447 RECORD 000395  066403  SHERMAN ALICE A ✓     010 PCT   052973  128322519  PCF02437  02446.00   4/1/42    8
370 RECORD 000396  067[illegible]  LIER BARBARA E ✓  113PCT    042573  080767577  PCF02412  02526.00   10/30/42  784
369 RECORD 000397  066016  ALMA GERALDINE L ✓    M PCT S   052973  072327273  PCF02413  02527.00   12/18/42  527
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368 RECORD4 000395 060967 STROT SONDRA L ✓    075 PCT 052972 129367711 PCFC2514       02526.00    10/1/43      23
222 RECORD4 000399 167.65 JONES MARIAN P ✓    023 PCT 062575, [illegible] [illegible] 02675.00    10/13/41    609
  7 RECORD8 000400 060701 BLACKSPEAR JERRY L ✓ 076 PCT 102973 2[illegible]457 PCFC2881 02682.00    7/29/44    1708
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Exhibit C to reply affidavit of Murray A. Gordon

1. Disclosure

FPO lists 1964 and 1969:
- name
- date birth - education
- list - grade - position - date
- appointment date
- application date - request or inquiry
  - formal
- personnel file
- pre-application correspondence, notes, records, files

PO lists from 1964 - 1973:
- exam notices
- application dates
- all requests for applications
- all applications
- exam dates
- list dates
- list - names - grades - date of app't.

Trainee appointments:
- -name
- -list position and grade
- -date appointed as trainee
- -date appointed as PO

Lay-off list re 7/1/75:
- names - sex
- dates/appointment
- appointment list - position - grade

Reinstatement list - as of 7/1/75 - as of now:
- names - sex
- dates/appointment
- appointment list - position - grade

2. Fact stipulation

(i) 1964 - 6/30/1975 re FPO and total PD:
  a. quota in each rank, including trainees
     roster " " " " "
  b. # FPO and PO appointed each year
(ii) 1964 - 1973 exams:
  - number for FPO; PO; trainee
  - eligibility for each
(iii) nature 1969 FPO & PO exams
(iv) nature 1973 exam
(v) trainee appointees during freeze
(vi) basis and sequence of appointments 1964-75, including comparability of grades of FPO and PO appointed
(vii) 7/1/75 lay-off % FPO/PO
(viii) remaining # FPO
(ix) seniority basis lay-off
(x) reinstatement PO/ FPO to date
(xi) reinstatement list composition

3. Conclusions stipulation

(i) FPO who took 1964 exam, who either failed or on 1964 list and not appointed from that list, who took 1969 exam and appointed after 1973 then laid-off.
(ii) FPO who applied in writing for PO exam between 1964 and 1969, eligible (except for sex) and available for exam, and refused permission.
(iii) FPO who took 1969 exam with mark higher than PO appointed before freeze in 1970, but not appointed until 1973.
(iv) FPO who took 1969 exam, eligible for trainee except for sex, with mark higher than male appointed as trainee, but not appointed until 1973
(v) FPO entitled to constructive seniority by reason of "expressed desire", eligibility (except for sex), and availability re particular PO exam between 1964 and 1969, to have constructive seniority calculated as of mean appointment date of PO off the list resulting from that exam.
(vi) Constructive seniority, where granted, to be for all purposes, including but not limited to promotion eligibility, increments, pension, future lay-off and reinstatement.
(vii) Ties to be broken by reference to date of application.

(viii) Where constructive seniority establishes FPO should not have been laid-off, full back-pay to date of lay-off and prospectively with deductions for other earnings but not unemployment insurance.

4. Process (schedule) (expedited basis)

(i) class certification on basis of FPO discriminatorily laid off.
(ii) Duffy conference
(iii) stipulations
(iv) discovery and inspection
(v) depositions if necessary
(vi) pleadings - motions
    -answer
    -temporary injunction
    -summary judgment
    -D/I
    -admissions
    -depositions
    -counsel fees
(vii) Special Master

Exhibit D to reply affidavit of Murray a. Gordon

The City of New York
LAW DEPARTMENT
MUNICIPAL BUILDING
NEW YORK, N.Y. [illegible]

[illegible] BERNARD RICHLAND
Corporation Counsel

July 7, 1976

Honorable Kevin T. Duffy
United States District Judge
United States Courthouse
Foley Square
New York, New York

Re: Acha et al v. Beame et al
75 Civ 3128

Dear Judge Duffy:

I have been advised this date by Police Commissioner Codd that the Department will rehire 60 police officers in rank-list order from the Preferred Eligible List effective July 19,1976. To afford adequate notice of intent to re-hire to those affected individuals the Department will send notices on July 8, 1976 advising that provisional employment is being offered under a grant administered by the Law Enforcement Assistance Administration (LEAA) subject to rights if any to be determined in Guardians Associaiton of the Police Department v. Civil Service Commission 76 Civ 1982 as well as the above-captioned matter. Annexed is a copy of the notice of intent to re-hire and the terms and conditions of temporary employment.

Counsel for plaintiffs in both actions have been advised today of these impending rehirings.

For the court's information, the first sixty (60) persons on the preferred list include 39 white males, 11 black males, 9 Hispanic males and 1 Black female. These are the only persons to whom notices will be sent on July 8, 1976 with responses to be received on or before July 13, 1976.

Yours very truly,

Michael Cecere

Michael Cecere
Assistant Corporation Counsel

MC:mpn

To: Murray A. Gordon, Esq.

Encls.

Service of ~~three~~ Two (2) copies of the within JOINT APPENDIX - VOLUME I

is admitted this 1ST day of SEPT. 1977

CORPORATION COUNSEL
CITY OF NEW YORK

THREE COPIES OF THE WITHIN PAPER
HAVE THIS DAY BEEN RECEIVED AT THE
OFFICE OF THE CORPORATION COUNSEL
~~[illegible]~~
Sept 1, 1977
CORPORATION COUNSEL